



**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL Nos. .... OF 2026  
[Arising out of SLP (C) Nos. 8850-8851 OF 2023]**

**E. MUTHURATHINASABATHY & ORS. ... APPELLANTS**

**VERSUS**

**M/S. SRI INTERNATIONAL & ORS. ... RESPONDENTS**

**WITH**

**CIVIL APPEAL Nos. .... OF 2026  
[Arising out of SLP (C) Nos. 12331 & 12999 OF 2023]**

**CENTRAL BANK OF INDIA ... APPELLANT**

**VERSUS**

**M/S. SRI INTERNATIONAL & ORS ... RESPONDENTS**

**J U D G M E N T**

**DIPANKAR DATTA, J.**

1. Leave granted.

**THE APPEALS**

2. The two sets of appeals arise out of proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002<sup>1</sup>. Appellants<sup>2</sup> in the lead appeals are the auction purchasers whereas Central Bank of India<sup>3</sup> is the appellant in the connected appeals. They question the correctness and legality of the common judgment and order dated 12.04.2023 passed by the High Court of Judicature at Madras<sup>4</sup> while deciding Writ Petition Nos. 32958 of 2022 and 32016 of 2022. In substance and in gravamen, the High Court allowed two writ petitions instituted by the borrowers and the guarantor with directions, resulting in setting aside of recovery measures undertaken by the secured creditor under the SARFAESI Act including the annulment of an auction sale conducted to enforce a secured debt.

3. Respondent 1 is a partnership firm<sup>5</sup>, whose partners are respondents 2 and 3<sup>6</sup>. Respondent 4 stood as guarantor for the loan. Since the appeals emanate from the same loan transaction, the same secured assets, and a common judgment of the High Court, they have been heard together and are being disposed of by this common judgment.

### **FACTUAL PANORAMA**

4. The facts, which lie at the very heart of the controversy and are indispensable for the disposal of the present appeals, may now be adumbrated in seriatim.

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<sup>1</sup> SARFAESI Act

<sup>2</sup> auction purchasers, hereafter

<sup>3</sup> secured creditor, hereafter

<sup>4</sup> High Court

<sup>5</sup> firm, hereafter

<sup>6</sup> borrowers, hereafter

- a. On 03.11.2017, the firm had availed various credit facilities from the secured creditor to the tune of Rs. 4 crore. The secured creditor's attempt to auction the subject property<sup>7</sup> triggered the present *lis*. Upon failure of the borrowers to adhere to the repayment schedule, the loan account was classified as a non-performing asset on 25.11.2018 in accordance with the applicable regulatory norms.
- b. Consequent thereto, the secured creditor initiated proceedings under the SARFAESI Act on 10.02.2020 by issuance of a demand notice under Section 13(2), calling upon the borrowers to discharge the outstanding liability in a sum of Rs. 3,89,31,614/- plus interest and costs within the stipulated period of 60 days from the receipt thereof. As the demand was not complied with, the secured creditor proceeded to take measures under Section 13(4) of the SARFAESI Act *vide* the issuance of a possession notice dated 21.04.2020.
- c. After taking symbolic possession under Section 13(4), the secured creditor proceeded to bring the secured assets to sale. Sale notices for the mortgaged properties were issued to the borrowers and the guarantor, and the cumulative reserve price was fixed at Rs. 3,96,11,000/, culminating in an e-auction held on 04.09.2020 in which the auction purchasers emerged as the highest bidders. While the auction was managed as a unified process for four

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<sup>7</sup> secured assets, hereafter

distinct properties, comprising a 13.17-cent commercial property, a 15-cent vacant land, a 5.28-cent commercial property, and a 5.50-cent residential property, the bidding for each property was handled individually based on their respective reserve prices. The auction purchasers emerged as the successful bidders for these separate properties simultaneously upon the conclusion of the e-auction on the same day. They deposited 25% of the bid amount in terms of Rule 9(3) of the Security Interest (Enforcement) Rules, 2002<sup>8</sup>.

- d. Aggrieved by the measures adopted by the secured creditor, the borrowers and the guarantor approached the Debts Recovery Tribunal, Coimbatore<sup>9</sup> by instituting applications under Section 17 (the first one being S.A. No. 263/2020). During the pendency of such proceedings, a series of interim orders came to be passed by the DRT, the Debts Recovery Appellate Tribunal, Chennai<sup>10</sup>, and the High Court in different proceedings which, at various stages, restrained confirmation of the auction sale or directed maintenance of *status quo* with respect to the secured assets. The exact import and operative effect of these interim orders, particularly those passed in December 2020, would later attain significance.

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<sup>8</sup> SARFAESI Rules

<sup>9</sup> DRT

<sup>10</sup> DRAT

- e. Aggrieved by the continuation of the proceedings under the SARFAESI Act and the auction sale, the borrowers filed WP No. 11948/2020 wherein they prayed, *inter alia*, for (i) declaration that the secured debt stood discharged, (ii) direction for release of the secured assets, and (iii) refund of the auction amount deposited by the auction purchasers. The High Court, on 01.09.2020, permitted the secured creditor to conduct e-auction but restrained it from confirming the sale until 08.09.2020, while granting liberty to the respondents to move the DRT.
- f. On 05.09.2020, the auction purchasers having emerged as the successful bidders in the e-auction, deposited 25% of the bid amount in terms of the applicable rules. The sale, however, was not confirmed, as confirmation of the auction stood interdicted by an order of stay. Thereafter, on 07.09.2020, the DRT, while taking up I.A. No. 1026/2020 in S.A. No. 263 of 2020, considered it appropriate to test the *bona fides* and willingness of the borrowers to regularise the account and, accordingly, directed them to deposit a sum of Rs. 2 crore with the secured creditor within a period of four weeks from that date. DRT further directed that the auction purchasers be impleaded as parties to the proceedings.
- g. Soon thereafter, all the three successful bidders, i.e., auction purchasers, sent letters to the secured creditor, showing willingness to deposit 75% on confirmation of sale, on 17.09.2020.

- h. Aggrieved by the order passed by the DRT in I.A. No. 1026 of 2020 in S.A. No. 263 of 2020 directing deposit of Rs. 2 crore, the borrowers approached the High Court by filing C.R.P. (PD) No. 1800 of 2020, seeking waiver of such deposit. The High Court, by its order dated 01.10.2020, disposed of the revision by granting liberty to the borrowers to prefer an appeal before the DRAT within a period of two weeks and directed the parties to maintain *status quo* in the interregnum. The High Court also recorded, in the said order, that the auction purchasers had deposited 25% of the bid amounts qua the respective secured assets put up for auction.
- i. Pursuant thereto, the borrowers preferred an appeal<sup>11</sup> under Section 18 of the SARFAESI Act before the DRAT. On 19.10.2020, the DRAT while modifying the conditional order passed by the DRT, reduced the quantum of deposit from Rs. 2 crore to Rs. 1.5 crore with direction to deposit the same in two equal instalments of Rs. 75 lakh each, by 17.11.2020 and 17.12.2020. DRAT further directed that *status quo* be maintained.
- j. While complying with the said order by depositing the first instalment of Rs. 75 Lakh, the borrowers and the guarantor approached the High Court by filing C.R.P. No. 2187 of 2020, assailing the order of the DRAT to the extent it required deposit of the second instalment of Rs. 75 lakh. The High Court, by its order dated 15.12.2020, took note of the fact that even after satisfaction

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<sup>11</sup> A.IR:105/2020

of the dues, a sum of Rs. 40 lakh would remain with the secured creditor and hence, it modified the order of the DRAT and reduced the second instalment from Rs. 75 lakh to Rs. 35 lakh with direction to the borrowers to deposit the said amount within a period of two weeks, failing which the order would stand vacated automatically. The High Court further directed the DRT to dispose of S.A. No. 263 of 2020 within a period of three weeks. Significantly, while granting liberty to the secured creditor to accept the balance sale consideration from the auction purchasers, the High Court made it clear that no further steps shall be taken till the disposal of S.A. No. 263 of 2020.

- k. Thereafter, on 23.12.2020, the auction purchasers addressed separate letters to the secured creditor expressing readiness and willingness to deposit the balance 75% of the sale consideration, however, with the rider that such payments would be made upon confirmation of the sale by the secured creditor.
- l. The secured creditor, in turn, filed a memo dated 16.02.2021 before the DRT, setting out the particulars of the e-auction conducted on 04.09.2020 and the payments made by the auction purchasers towards earnest money deposit and the initial 25% of the bid amounts. A copy of the said memo was duly served on the borrowers. Significantly, the secured creditor stated therein that the sale had not been confirmed owing to the subsisting order of stay, and further clarified that only after disposal of S.A. No. 263

of 2020 would the sale be confirmed, whereupon the balance sale consideration had to be paid by the auction purchasers.

m. Aggrieved, the borrowers and the guarantor filed S.A. 382/2021 before the DRT challenging the e-auction held on 04.09.2020. In the meanwhile, the auction purchasers had made fixed deposits of Rs. 2,13,00,000 (P1); Rs. 91,00,000 (P2); and Rs. 23,70,000/- (P3) with the secured creditor towards payment of balance amount of sale consideration. It was submitted before the DRT in SA No. 263/2020 that the same could be appropriated by the secured creditor towards the balance sale considerations as soon as sale was confirmed after the stay is vacated.

n. After hearing the parties, the DRT dismissed both SA Nos. 263/2020 and 382/2021, *vide* a common order dated 31.03.2022. Pursuant thereto, admittedly, the auction purchasers had paid the remaining 75% of the sale consideration on the same day, and the sale confirmation letter, dated 31.03.2022, was issued by the secured creditor to the auction purchasers.

o. On 18.04.2022, since the auction purchasers had paid the sale consideration in full, the secured creditor made over the sale certificate to the auction purchasers and registered the same in their favour in the Office of the Sub-Registrar *vide* document Nos. 2041, 2042, 2043, 2044/2022.

p. Aggrieved by the common order dated 31.03.2022 passed by the DRT, the borrowers filed appeals under Section 18 being RA (SA)

Nos. 17/2022 and 18/2022 on 04.05.2022 and paid Rs. 85 lakh as pre-deposit before the DRAT. The appeals were subsequently dismissed by order dated 24.11.2022 holding, *inter alia*, that confirmation of the sale had remained stayed during the pendency of the proceedings and that no infirmity could be found in the action of the secured creditor. Prior to that, on 30.05.2022, upon a petition being Crl. M.P. No. 3879/2022, filed by secured creditor under Section 14 of the SARFAESI Act to take actual possession of the secured assets, the Chief Judicial Magistrate, Tirupur had appointed an Advocate Commissioner to assist the secured creditor.

- q. The dissatisfied borrowers then filed two writ petitions in November 2022, being W.P. No. 32958/2022 and W.P. No. 32016/2022, wherein *status quo* was ordered in respect of the secured assets. Subsequently, on 16.12.2022, the borrowers filed an affidavit in WP No. 32016/2022, before the High Court, stating *inter alia* that during the course of hearing of the writ petition, a query was posed by the Court to the learned senior counsel appearing on their behalf with regard to registration of the sale certificate. It was averred that, owing to a mistaken belief that the sale certificate had not been issued, the factum of issuance and registration of the sale certificate was not brought to the notice of learned senior counsel at the relevant point of time.

**IMPUGNED JUDGMENT OF THE HIGH COURT**

5. The proceedings reached its final curtain, with the High Court bringing closure to the long drawn legal battle by the impugned common judgment. As noticed, the writ petitions instituted by the borrowers were allowed by setting aside the order of the DRAT dated 24.11.2022, as well as the auction sale held on 04.09.2020 and the consequent sale certificate issued in favour of the auction purchasers.
6. The High Court recorded that although the auction was conducted on 04.09.2020, a series of interim orders passed by the DRT, the DRAT and the High Court had, at different stages, interdicted confirmation of the sale. While such protection was subsequently modified, the High Court construed its order dated 15.12.2020 in C.R.P. No.2187 of 2020 as permitting confirmation of the sale and receipt of the balance 75% of the bid amount, while restraining only further steps such as issuance and registration of the sale certificate. On this interpretation, the High Court held that the secured creditor and the auction purchasers erred in deferring confirmation of the sale until 31.03.2022, resulting in a delay of nearly fifteen months.
7. Holding that such delay was contrary to Rule 9(4) of the 2002 Rules, and inconsistent with the principles enunciated by this Court in **Mathew Varghese v. M. Amritha Kumar**<sup>12</sup>, the High Court concluded that the sale stood vitiated by material irregularity. The finding of the DRAT that

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<sup>12</sup> (2014) 5 SCC 610

confirmation of sale was stayed till disposal of the appeals under Section 18 was held to be factually incorrect and unsustainable.

- 8.** The High Court further held that the borrowers' right of redemption had not stood extinguished, notwithstanding issuance and registration of the sale certificate, particularly as the borrowers had been contesting the proceedings at every stage and had paid the entire outstanding dues with interest during the pendency of the writ petitions. Emphasising that the object of the SARFAESI Act is recovery of dues and not deprivation of property where the debt stands fully discharged, the Court permitted redemption of the mortgaged properties by the borrowers.
- 9.** Accordingly, the auctions and sale certificates were set aside, the secured creditor was directed to release the secured assets from mortgage and return the title deeds to the borrowers, and the auction purchasers were held entitled only to refund of the entire sale consideration with interest at 12% per annum.

#### **QUESTIONS OF LAW**

- 10.** In view of the rival submissions advanced on behalf of the parties, the controversy in the present proceeding crystallises into the following questions of law:
  - a. Whether an auction sale under the SARFAESI Act, once confirmed and followed by issuance and registration of a sale certificate, can be annulled by the High Court in writ jurisdiction on equitable considerations?

- b. Whether the borrower's right of redemption survives issuance and registration of a sale certificate under the SARFAESI Act?

**ANALYSIS**

- 11.** The factual matrix outlined above discloses a complicated background interspersed with judicial interventions. At the outset, before adverting to the legality of the auction and its confirmation, it would be apposite to address a preliminary aspect which weighed with the High Court, and was vehemently pressed into service before us as well, namely, the misrepresentation by the borrowers with regard to issuance and registration of sale certificate.

**I. INCORRECT STATEMENT, WHETHER CAUSED MATERIAL PREJUDICE?**

- 12.** It is not in dispute that during the course of hearing of W.P. No. 32016 of 2022, a query was posed by the High Court to the learned senior counsel representing the borrowers as to whether the sale certificate had been issued and registered. The answer then furnished was in the negative, which was also recorded by the High Court in its order dated 28.11.2022.
- 13.** However, soon thereafter, *vide* an affidavit dated 16.12.2022, the borrowers had acknowledged that the statement was incorrect and explained that the same had stemmed from a mistaken belief and lack of instructions.
- 14.** In the instant case, the contemporaneous conduct of the borrowers assumes significance. Far from attempting to derive an unfair advantage, they were, at every stage, prosecuting their remedies before

the DRT, the DRAT and the High Court, and had already deposited substantial amounts, including the entire outstanding dues during the pendency of the proceedings. The early admission of the mistake could have operated as a mitigating factor preventing the otherwise stern consequences that may attach to an inaccurate statement made before the High Court.

- 15.** In this case, the High Court having not taken a very stern view of the matter, which is not entirely wrong in the facts and circumstances, it would require a very strong case to be set up by the appellants to have the discretion exercised by the High Court in favour of the borrowers interdicted in appeal. Here, the High Court viewed the misrepresentation as not to have been deliberately made to secure such an advantage that the appellants were seriously prejudiced and the prompt affidavit, explaining the circumstances, as one which was a genuine attempt to rectify the error. It was within the jurisdiction and discretion of the High Court to condone the misrepresentation, which it did considering the interests of justice, and proceeded to focus on the merits of the writ petition rather than resting its decision on a procedural error to nip the writ petition in the bud. Such an approach did align with the broader concept of justice and we do not consider that this appeal should be allowed merely based on a sole misrepresentation of fact particularly when corrective action by owning responsibility was swiftly taken.

**RESOLUTION OF THE PRESENT *LIS* - TURNS ON CHRONOLOGY**

- 16.** The resolution of the present *lis* turns rudimentarily on chronology. When statutory timelines are invoked to justify divestment of property, the courts must first ascertain, with precision, whether delay is attributable to the borrower or is the upshot of judicial intervention and procedural restraint. The record before us furnishes a clear answer.
- 17.** The secured creditor issued a demand notice under Section 13(2) of the SARFAESI Act on 27.02.2020, calling upon the borrower to discharge the outstanding liability. Upon failure to do so, symbolic possession of the secured asset was taken under Section 13(4) of the SARFAESI Act on 30.06.2020.
- 18.** A sale notice under Rule 8(6) of the SARFAESI Rules was issued on 31.07.2020, thereby fixing the date of e-auction as 04.09.2020. The auction was conducted as slated, and the auction purchasers had deposited 25% of the bid amount on the same date in conformity with Rule 9(3) of the SARFAESI Rules.
- 19.** The High Court *vide* its order dated 15.12.2020, passed in CRP No. 2187 of 2020 and CMP No. 13798 of 2020, held as follows:
- 14.** It is also open to the respondent-Bank to accept the balance sale consideration from the auction purchaser and however it is made clear that till the disposal of SA. No. 263 of 2020, by DRT, Coimbatore, no further steps should take place.
- 20.** A plain reading of the aforesaid order makes it manifest that while the High Court permitted the secured creditor to accept the balance sale consideration, it consciously restrained the secured creditor from taking

forward the sale to its statutory culmination. To construe the expression “no further steps” as barring receipt of balance sale consideration would render the first part of paragraph 14 of order dated 15.12.2020 otiose. The restraint, therefore, could only have operated in respect of the subsequent and final stages of the process, namely, issuance and registration of the sale certificate, which alone confer title. Any other interpretation would not only defeat the evident intent of the order but also introduce an internal incongruity *qua* its operative directions.

- 21.** The borrowers, in this interregnum, continued to prosecute their statutory remedies. The applications under Section 17 remained pending, and subsequent interim orders dated 18.01.2021 and 09.06.2021 continued the restraint on finalisation of the sale.
- 22.** It was only upon the dismissal of the Section 17 applications on 31.03.2022 that the impediment to the completion of the sale stood removed. It is the admitted position that on that very date, the auction purchasers paid the remaining 75% of the sale consideration, i.e., after approximately a period of 15 months, upon obtaining an order in their favour earlier on 15.12.2020. Thereafter, the secured creditor proceeded to confirm the sale and issue the sale certificate in favour of the auction purchasers on 18.04.2022, which was subsequently registered in accordance with law.

**II. STATUTORY STIPULATION FOR COMPLETION OF SALE: IS THE SALE IN FAVOUR OF THE AUCTION PURCHASERS INCHOATE?**

- 23.** While the rights of a *bona fide* auction purchaser and the sanctity of a confirmed sale ordinarily merit protection, such protection is not absolute and must yield where the sale process itself is shown to be legally infirm or incongruous with the extant statutory framework. In the present factual milieu, where the completion of the sale was delayed beyond stipulated timelines due to judicial interventions and procedural constraints, and where such delay is not attributable to the borrowers, the mere factum of confirmation cannot preclude judicial scrutiny. The *raison d'être* of proceedings under the SARFAESI Act is not the mechanical completion of a sale, but the lawful realisation of the secured asset in a manner that is fair, transparent, and conducive to securing the best possible value while balancing the interests of all stakeholders involved. If the process suffers from material irregularities or fails to conform to mandatory requirements, thereby rendering the sale inchoate, the Court would be justified in intervening, particularly where the borrower has, in the interregnum, discharged the outstanding liability, so as to obviate disproportionate deprivation of property and uphold substantive justice.
- 24.** Though the SARFAESI Rules do not employ the expression “completion of sale” in a single provision as such, a conjoint reading of Rules 9(3), 9(4), 9(5) and 9(6) thereof eschews any doubt with respect to the legislative intent, which is to ensure that a process of sale, once initiated,

is either brought to fruition within a defined outer limit or falls through with statutory consequences.

- 25.** Rule 9(4) of the SARFAESI Rules prescribes the outer limit within which the successful auction purchaser is required to deposit the balance sale consideration. The said provision reads as follows:

The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties, but in no case exceeding three months.

(emphasis ours)

- 26.** As evinced hereinabove, the statutory mandate is writ large. The balance 75% of the sale consideration is required to be paid within the time stipulated, subject only to a limited extension not exceeding three months. Admittedly, in the present case, the auction purchasers had expressed willingness to deposit the balance amount as early as on 17.09.2020, however, this was accompanied by a rider that the deposit be contingent upon the secured creditor's formal confirmation of the sale. However, it did not positively respond owing to the pendency of the proceedings within the period contemplated by the relevant rule. Instead, the deposit was made only on 31.03.2022, long after the outer limit prescribed under the statutory framework. Nothing prevented the secured creditor from accepting the balance consideration, not even the restraining order of the High Court dated 15.12.2020. In fact, the said order permitted the secured creditor to receive the balance consideration. The failure to receive the balance sale consideration or

the delay in deposit of the balance sale consideration, whatever one would like to call it, therefore, inures to the benefit of the borrowers and operates against the finality of the sale. A transaction which proceeds in violation of the statutory timeline cannot be pressed into service, for divesting the borrowers of their secured assets. Crucially, the said delay is not attributable to any conduct on the part of the borrowers. Instead, the borrowers pursued other remedies available in law, and the protracted pendency of such proceedings would not hold up as a justification to dispense with the rigour of the SARFAESI Rules, especially, when the consequence sought to be enforced is the irreversible divestment of the borrowers' secured assets.

- 27.** At this juncture, we may deal with the decision of this Court in ***Celir LLP v. Bafna Motors Pvt. Ltd***<sup>13</sup> on which reliance has been placed by the appellants. The cited authority, in our considered opinion, does not advance the case of the appellants. In ***Bafna Motors Pvt. Ltd.*** (supra), the Court was concerned with a situation where the sale had attained statutory finality; the entire consideration had been deposited within the prescribed timeframe, and the sale certificate had been issued and registered without any subsisting judicial interdiction operating upon the process. It was in that factual milieu, this Court held that interference at a belated stage would unsettle vested third-party rights. The relevant paragraphs may be extracted for convenience as follows:

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<sup>13</sup> (2024) 2 SCC 1

**103.** It is an admitted fact that the entire bid amount was paid by the auction-purchaser as observed at SCC OnLine Bom para 10 of the impugned order [*Bafna Motors (Mumbai) (P) Ltd. v. Union Bank of India*, 2023 SCC OnLine Bom 2149]. Thus, the Bank was legally bound to issue the sale certificate as per the language of Rule 9(6) of the 2002 Rules. The said provision employs the phrase "shall". Thus, it is an instance of mandatory provision. There is nothing more in the realm of law that the auction-purchaser can do once he has made the entire payment to the Bank. The fact that the respondent Bank failed to issue the sale certificate raises serious concerns, when there was no stay by any competent forum. Even otherwise the general conduct of the respondent Bank has not been satisfactory. Once the entire bid price is paid and there is no stay granted by any forum known to law, the Bank is duty-bound to issue a valid sale certificate and hand over the physical possession of the secured asset to the auction-purchaser.

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**110.2.** The confirmation of sale by the Bank under Rule 9(2) of the 2002 Rules invests the successful auction-purchaser with a vested right to obtain a certificate of sale of the immovable property in the form given in Appendix V to the Rules i.e. in accordance with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002.

(emphasis ours)

**28.** The present case stands on an entirely different footing. Here, the completion of sale itself was prorogued far beyond the period contemplated by Rule 9(4), not on account of any default attributable to the borrowers, but owing to subsisting judicial orders and procedural restraints. The very bedrock upon which finality was recognised in ***Bafna Motors Pvt. Ltd.*** (supra) is, thus, conspicuously absent in the present case. Precedents, it is trite, are authorities for what they actually adjudicate upon and not for what may logically ensue therefrom; applied in that circumscribed sense, ***Bafna Motors Pvt. Ltd.*** (supra) is distinguishable on facts as well as principle and,

therefore, cannot be invoked to defeat the borrowers' subsisting right of redemption in the present case.

- 29.** The above conclusion also garners authoritative support in the decision of this Court in ***Mathew Varghese*** (supra), the relevant paragraphs of which are extracted hereinbelow:

**29.2.** When we analyse in depth the stipulations contained in the said sub-section (8), we find that there is a valuable right recognised and asserted in favour of the borrower, who is the owner of the secured asset and who is extended an opportunity to take all efforts to stop the sale or transfer till the last minute before which the said sale or transfer is to be effected. Having regard to such a valuable right of a debtor having been embedded in the said sub-section, it will have to be stated in uncontroverted terms that the said provision has been engrafted in the SARFAESI Act primarily with a view to protect the rights of a borrower, inasmuch as, such an ownership right is a constitutional right protected under Article 300-A of the Constitution, which mandates that no person shall be deprived of his property save by authority of law.

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**38.** On a reading of the above paragraphs, we are able to discern the ratio to the effect that a mere conferment of power to sell without intervention of the court in the mortgage deed by itself will not deprive the mortgagor of his right to redemption, that the extinction of the right of redemption has to be subsequent to the deed conferring such power, that the right of redemption is not extinguished at the expiry of the period, that the equity of redemption is not extinguished by mere contract for sale and that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The ratio is also to the effect that the power to sell should not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. The above proposition of law of course was laid down by this Court in *Narandas Karsondas* [(1977) 3 SCC 247] while construing Section 60 of the TP Act. But as rightly contended by Mr Shyam Divan, we fail to note any distinction to be drawn while applying the abovesaid principles, even in respect of the sale of secured assets created by way of a secured interest in favour of the secured creditor under the provisions of the SARFAESI Act, read along with the relevant Rules. We say so, inasmuch as, we find that even while setting out the principles in respect of the redemption of a mortgage by applying Section 60 of the TP Act, this Court has

envisaged the situation where such mortgage deed providing for resorting to the sale of the mortgage property without the intervention of the Court. Keeping the said situation in mind, it was held that the right of redemption will not get extinguished merely at the expiry of the period mentioned in the mortgage deed. It was also stated that the equity of redemption is not extinguished by mere contract for sale and the most important and vital principle stated was that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The completion of sale, it is stated, can be held to be so unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Therefore, it was held that until the sale is complete by registration of sale, the mortgagor does not lose the right of redemption. It was also made clear that it was erroneous to suggest that the mortgagee would be acting as the agent of the mortgagor in selling the property.

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**41.** Here again we find that even if there was some difference in the amount tendered by the borrower while exercising his right of redemption under Section 13(8), the question of difference in the amount should be kept open and can be decided subsequently, but on that score the right of redemption of the mortgagor cannot be frustrated. Elaborating the statement of law made therein, we wish to state that the endeavour or the role of a secured creditor in such a situation while resorting to any sale for the realisation of dues of a mortgaged asset, should be that the mortgagor is entitled for some lenience, if not more to be shown, to enable the borrower to tender the amounts due in order to ensure that the constitutional right to property is preserved, rather than it being deprived of.

(emphasis ours)

- 30.** The principle enunciated in ***Mathew Varghese*** (supra) squarely operates in the present case. A sale that remained inchoate in favour of the auction purchasers, owing to non-compliance with mandatory timelines prescribed under Rule 9(4) of the 2002 Rules, cannot be invoked to defeat the right of the borrowers to redeem, especially when the borrowers remitted the entire remaining dues on 02.12.2022, nor can a belated plea of third-party interest prevail when the statutory conditions for vesting the title were never fulfilled.

**31.** Dr. S. Muralidhar, learned senior counsel appearing for the auction purchasers placed reliance on the decision of this Court in ***M. Rajendran v. KPK Oils and Proteins India Pvt. Ltd.***<sup>14</sup> to contend that after the amendment to Section 13(8) of the SARFAESI Act, the borrower's right to redeem the secured asset stands curtailed and cannot be exercised beyond the stage contemplated under the statutory scheme. The paragraphs therefrom which were relied upon are extracted hereunder for facility of understanding:

**63.** In *Bafna Motors* (supra) this Court held that a borrower has a right to redeem the mortgage only till the publication of the Auction Notice under Section 13(8) of the SARFAESI Act. This Court analysed (*sic*, analysed the) orders passed by various High Courts in interpreting the provisions of Section 13(8) of the SARFEASI Act, post the 2016 Amendment and the intent underlying the amendment.

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**94.** This Court in *Bafna Motors* (supra) considered the conflicting orders passed by various High Courts in interpreting the provisions of Section 13(8) in relation to the right of redemption by the borrower.

**95.** In the final analysis, this Court noted that under the pre-amended Section 13(8) of the SARFAESI Act, the borrower could repay the dues, along with the interest and charges at any time "before the date fixed for sale or transfer". However, post Amendment, redemption is available before the date of publication of notice for public auction.

**96.** However, the amended Section 13(8) of the SARFAESI Act allows the exercise of right of redemption only till the date of publication of notice, which is a departure from the general right of redemption under the general law and therefore is inconsistent with Section 60 of Transfer of Property Act. In such a situation of inconsistency, the SARFAESI Act being a special one, would override the general law. This Court also took note of Section 35 and Section 37 respectively of the SARFEASI Act and held that Section 35 of the SARFEASI Act will have an overriding effect, notwithstanding anything which is inconsistent with any other law. Further, this Court held that the laws that are mentioned in Section 37 of SARFEASI Act i.e., laws which

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<sup>14</sup> 2025 SCC OnLine SC 2036

deal with securities or occupy the same field as the SARFAESI Act, would be applicable in addition to it and not in derogation to any other law.

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**106.** A borrower has no unfettered right to tender such amount of dues, as stipulated in Section 13(8), after the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be, because the restriction on the secured creditor, from transferring the secured asset, envisaged under clause(s) (i) and (ii) of the said provision, would only be attracted, if the dues are tendered prior to the publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be. Where the borrower tenders such dues after the publication of the notice stipulated in Section 13(8), the secured creditor is not bound to accept it, and can continue to proceed with the transfer of the secured asset, by way of lease, assignment or sale.

(emphasis ours)

- 32.** Reliance on **M. Rajendran** (supra), however, is misplaced in the facts of the present case. In **M. Rajendran** (supra), this Court was primarily concerned with the interpretation of Section 13(8), as amended, and the stage at which the borrower's right of redemption stands curtailed in the context of a completed statutory auction process. The controversy before us stands on a materially different footing. Here, the sale process had not attained finality in the manner contemplated under the statute at the relevant point of time, and the borrowers had demonstrated their willingness to discharge the secured debt. Consequently, the principle enunciated in **M. Rajendran** (supra) does not advance the case of the secured creditor and cannot be read as foreclosing relief to the borrowers in the peculiar facts of the present case.

**III. BORROWERS' REPAYMENTS**

- 33.** The record, when read as a *continuum* and not in fragmented silos, leaves little room for doubt that the borrowers had, by successive payments made under judicial supervision, brought the outstanding liability to the brink of complete extinguishment and stood well within reach of redeeming the secured asset. As reflected in the notice issued under Section 13(2) of the SARFAESI Act dated 10.02.2020, the total outstanding dues were quantified at Rs. 3,89,31,614/-. Pursuant to orders passed in the proceedings before the DRAT that followed, the borrower deposited Rs. 75,00,000/- as pre-deposit, and, upon modification by the High Court, further deposited Rs. 35,00,000/- on 15.01.2021. Thereafter, in compliance with subsequent directions, an additional sum of Rs. 85,00,000/- was deposited on 15.06.2022. Consequently, even prior to 31.03.2022, when the applications under Section 17 of the SARFAESI Act of the borrowers came to be dismissed, the outstanding amount stood reduced to approximately Rs. 1,95,00,000/-.
- 34.** The process of repayment by the borrowers did not halt there. When the writ petitions (leading to the impugned judgment before us) were entertained by the High Court, the borrowers were directed to deposit the entire balance amount within a week *vide* the order dated 28.11.2022. In compliance with the said direction, the borrowers remitted the entire remaining dues of Rs. 2,29,31,614 [Rs. 1,94,31,614 (balance amount) + Rs. 35,00,000 (interest)] by RTGS

on 02.12.2022, and addressed a contemporaneous communication dated 02.12.2022 to the secured creditor, seeking acceptance of the payment and return of the original title deeds. The details of these payments are set out in the compliance report dated 02.12.2022 and annexures forming part of the writ proceedings. The refusal by the secured creditor to accept the payment was not on the ground of any shortfall or default on the part of the borrowers, but solely on the premise that third-party interest had, by then, been created. In a situation where the borrowers had, in fact, discharged the entire quantified liability pursuant to judicial orders, such refusal by the secured creditor accentuates the disproportionate consequence sought to be visited upon them and starkly brings into focus why divestment of the secured assets of the borrowers in the face of well-nigh complete and ultimate full repayment cannot be sustained in law.

## **CONCLUSION**

- 35.** For the reasons discussed above, we find ourselves in complete accord with the conclusion arrived at by the High Court that (i) the impugned auction sale having not attained finality *qua* the auction purchasers in the manner contemplated by law and (ii) the borrowers, in the interregnum, having discharged the entire outstanding liability, they could not have been divested of the secured assets.

- 36. The appeals, therefore, being devoid of merit, stand dismissed.
- 37. Pending applications, if any, shall stand disposed of.
- 38. Parties shall bear their own costs.

.....J.  
(DIPANKAR DATTA)

.....J.  
(SATISH CHANDRA SHARMA)

**NEW DELHI;  
APRIL 01, 2026.**