2025:DHC:10911-DB

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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 27.10.2025***

Judgment pronounced on: 06.12.2025

\+ W.P.(C) 6494/2016 & CM APPL.4295/2025

CANARA BANK (ERSTWHILE SYNDICATE BANK)

...Appellants

Through: Ms. Anju Jain, Mr. Hitesh Sachar, Mr. Dev Inder Singh & Ms. Deeksha Kingrani, Advs.

versus

M/S KARISHMA ENTERPRISES & ORS. .....Respondents

Through: Mr. Pulkit Aggarwal, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present Petition, filed by the Petitioner, assails the correctness of the order dated 02.03.2016 [hereinafter referred to as "Impugned Order"] passed by the learned Debts Recovery Appellate Tribunal [hereinafter referred to as "DRAT"], Delhi, in Appeal No. 37/2016, titled ***M/s Karishma Enterprises & Anr. v. Syndicate Bank & Anr***.

2. The issue that arises for consideration in the present petition is whether the learned DRAT erred in failing to appreciate the prior conduct and explicit consent of Respondent Nos.1 and 2 to the sale of the mortgaged property as duly recorded in the learned Debt Recovery

Tribunal's [hereinafter referred to as "DRT"] order dated 16.04.2014 and in disregarding the fact that despite having consented to such directions, the Respondents nevertheless challenged the order in Appeal No. 303/2014, which was ultimately disposed of as not pressed and infructuous by the learned DRAT *vide* order dated 16.12.2014.

FACTUAL MATRIX:

3. In order to comprehend the issues involved in the present case, relevant facts, in brief, are required to be noticed.

4. The Petitioner Bank is a body corporate duly constituted under the Companies Act, 1970, having its head office at Manipal, Karnataka and branch offices, amongst others, at International Business Branch, Connaught Place, New Delhi-110001. The Respondent No.1 is a proprietorship firm, through its Proprietor, Sh. Vijay Kumar, and is the Principal Borrower. The Respondent No.2 is the Mortgagor/Guarantor of the credit facility granted in favour of the Respondent No.1 and the Respondent No.3 is the auction purchaser of the mortgaged property.

5. In terms of Sanction Letter No. SOD/ODMS dated 19.09.2007, the Petitioner Bank extended a credit facility of Rs. 100 lakhs to Respondent No.1, secured by the guarantee and mortgage furnished by Respondent Nos.1 and 2. To secure the said facility, Respondent Nos.1 and 2 deposited the title deeds of the properties measuring 275 sq. yds., 325 sq. yds., and 400 sq. yds. bearing No. 1/5875 out of Khasra No. 4436/3456/1855/16, situated at Village Chandrawali, in

the Abadi of Kabool Nagar, Shahdara, Delhi [hereinafter referred to as "the three mortgaged properties"], with the Petitioner Bank and duly executed the Composite Hypothecation Agreement, the Deed of Guarantee, and the Letter confirming the deposit of title deeds, all dated 12.10.2007.

6. In 2008, M/s Madhav Enterprises, through Respondent No.2, sought an additional credit facility of Rs. 225 lakhs, for which Respondent No.2 extended the existing mortgage and confirmed that the liabilities arising under the facilities sanctioned to Respondent No.1 would continue for the newly sanctioned limits.

7. Subsequently, on 19.09.2009, the Petitioner Bank reviewed and renewed Respondent No.1's credit facility to Rs. 100 lakhs, whereupon Respondent Nos.1 and 2 executed the requisite security documents, including the Composite Hypothecation Agreement, General Agreement, Deed of Guarantee and Undertaking for creation of a second/subsequent mortgage, all dated 25.09.2009. Respondent No.2 further reaffirmed the subsistence of these liabilities through confirmation letters dated 17.03.2010. Thereafter, on 20.12.2010, the Petitioner Bank again renewed the said credit facility of Rs. 100 lakhs, following which, Respondent Nos.1 and 2 executed the corresponding renewal documents on the same date.

8. After availing of the above credit facilities, the Respondent Nos.1 and 2 failed to adhere to the financial discipline and defaulted in making payment of the amount and interest thereon.

9. Further, the Respondent No.1, *vide* stock statement dated 06.07.2012 for the quarter ending June 2012, reported nil opening stock of raw material and work-in-process, indicating that no manufacturing activity or regular business was being undertaken during the relevant period. By 31.12.2012, the accounts of Respondent Nos.1 and 2 had become highly irregular, with the Overdraft ("OD") and Cash Credit ("CC") limits exceeding the sanctioned limits.

10. Consequently, the Petitioner Bank issued repeated reminders *vide* letters dated 27.02.2013, 09.03.2013 and 19.03.2013 calling upon the Respondent Nos.1 and 2 to regularize the account and furnish the requisite documents for renewal of limits, failing which action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as "SARFAESI Act"] could be initiated. Despite these opportunities, Respondent Nos.1 and 2 failed to regularize the account.

11. Resultantly, on 31.03.2013, the account of the Respondent No.1 was declared a Non-Performing Asset ("NPA").

12. Thereafter, on 22.04.2013, the Petitioner Bank issued a notice under Section 13(2) of the SARFAESI Act. Pursuant thereto, a Court Receiver was appointed *vide* order dated 05.08.2013. However, by order dated 30.08.2013, the said appointment was modified and Smt. Madhuri Gupta was appointed as the Court Receiver. In consequence, a fresh notice dated 02.09.2013 was issued scheduling possession for 18.09.2013.

13. Further, in September 2013, Respondent Nos.1 and 2 filed Writ Petition (C) No. 5701/2013 before this Court, challenging the measures undertaken by the Petitioner Bank under the SARFAESI Act. *Vide* order dated 10.09.2013, the writ petition was dismissed as withdrawn, with liberty granted to the Respondents to pursue their remedy under Section 17 of the SARFAESI Act.

14. Thereafter, in September 2013, Respondent Nos.1 and 2 instituted S.A. No. 325/2013 before the learned DRT assailing the Petitioner Bank's action. By order dated 17.09.2013, the learned DRT restrained the Petitioner Bank and the Court Receiver from proceeding further, subject to the Respondent Nos. 1 and 2 depositing Rs. 20 lakhs within 30 days, including Rs. 5 lakhs within the first week. It was further clarified that any default would entitle the Petitioner Bank, through the Court Receiver, to continue proceedings under the SARFAESI Act in accordance with law.

15. *Vide* possession notice dated 03.10.2013, the Authorized Officer of the Petitioner Bank, with the assistance of the Court Receiver, took symbolic possession of the mortgaged properties measuring (i) 325 sq. yds. and (ii) 275 sq. yds., and accordingly affixed the possession notices along with photographs at the site. However, despite these steps, the Petitioner Bank could not take possession of the remaining mortgaged property measuring 400 sq. yds., since the same had already been taken over by ARCIL.

16. Subsequently, *vide* notice dated 10.01.2014, the Petitioner Bank issued a sale notice for the auction of the mortgaged properties. In

response, Respondent Nos.1 and 2 filed I.A. No. 376/2014 challenging the said auction notice. Thereafter, *vide* order dated 16.04.2014, and in light of the submission made on behalf of Respondent Nos.1 and 2 that the sale of one property would be sufficient to satisfy the outstanding dues, the learned DRT disposed of I.A. No. 376/2014 with a specific direction to put only one property to auction.

17. In pursuance of the aforesaid order dated 16.04.2014, the Petitioner Bank accordingly proceeded to auction the property measuring 275 sq. yds. for a total consideration of Rs. 214 lakhs, as against its assessed market value of Rs. 213 lakhs.

18. Meanwhile, Respondent Nos.1 and 2 preferred Appeal No. 303/2014 challenging the order dated 16.04.2014 passed in I.A. No. 376/2014, notwithstanding the fact that the said order had been passed with their consent.

19. Ultimately, *vide* order dated 16.12.2014, the learned DRAT disposed of Appeal No. 303/2014 as infructuous in view of the fact that the property in question had already been sold, and accordingly directed that the main S.A. No. 325/2013 will be decided in accordance with the law. The relevant portion of the said order is reproduced hereunder:

> *"During the pendency of the appeal, the property has been sold for a sum of Rs. 2.14 crores. Notice for recovery in this case was for Rs. 1.06 crores. That being the position, a substantial sum of the amount due to the bank has already been recovered. Counsel for the appellants submit that in view of this factual position, he will not press the appeal but would pray that some direction be issued to the Tribunal below to decide issues which the appellants have raised in*

the S.A. In view of the submissions as made, this appeal is disposed of as having been rendered infructuous..."

20. After the sale of the mortgaged property and the passing of the final order, the learned DRT, *vide* order dated 13.04.2015, granted Respondent Nos.1 and 2 an additional opportunity to deposit the outstanding dues, should they wish to save their property. The relevant order dated 13.04.2015 is reproduced as hereunder:

"Heard the Ld. Counsel for the applicant at length and this Tribunal has posed question before the Ld. Counsel for the Applicant whether his client wants to save his property by paying the dues of the bank, the Ld. Counsel for the Applicant submits that he will seek instruction from his client. Let applicant bring money or deposit the money with the Respondent Bank, then further against will be heard by this Tribunal."

21. Subsequently, the learned DRT dismissed S.A. No. 325/2013 *vide* order dated 29.09.2015. Following this dismissal, the Petitioner confirmed the auction sale in favour of the auction purchaser and handed over the title documents along with the sale certificate to Respondent No.3 on 30.09.2015. It is pertinent to note that during the pendency of the S.A., the Petitioner had filed O.A. No. 347/2015 on 30.08.2015 seeking recovery of Rs. 1,81,84,429/-, which was later withdrawn in good faith after disposal of the S.A.

22. Thereafter, Respondent Nos.1 and 2 preferred Appeal No. 37/2016 before the learned DRAT, challenging the dismissal order dated 29.09.2015 passed in S.A. No. 325/2013. The learned DRAT *vide* the Impugned Order dated 02.03.2016 allowed the Appeal 37/2016 filed by the Respondent Nos.1 and 2 and set aside the above order dated 29.09.2015 passed by the learned DRT in S.A. No. 325/2013.

CONTENTIONS OF THE PARTIES:

23. Heard learned Counsel for the parties at length and, with their able assistance, perused the paper book. Learned Counsel have also filed their written submissions, which are on record.

24. Learned Counsel for the Petitioner Bank has submitted as under:

i. The learned DRAT has miscalculated the period of ninety days in declaring the accounts of the Respondent Nos.1 and 2 as NPA.

ii. The classification of NPA was not the sole factor in determining the action taken by the Petitioner Bank but that, in conjunction with other reasons, namely, the magnitude of amount due and outstanding, the reasons which prompted the Respondents Nos. 1 and 2 to default in the repayment schedule, the nature and prospects of their businesses which were necessitated to the action taken under Section 13(4) of the SARFAESI Act.

iii. The learned DRAT has ignored that the issues were settled by it in its earlier order dated 16.12.2014 in Appeal No. 303/2014.

iv. The learned DRAT has overlooked the conduct of the Respondents in flouting their undertaking given to the learned DRT. They have rescinded their consent and have filed frivolous litigation to gain time.

v. The learned DRT *vide* order dated 13.04.2015 further granted opportunity to the Respondent Nos.1 and 2 to deposit the amount in case they desire to save their property, which had not been exercised by the Respondents has not been considered while passing the Impugned Order.

25. *Per contra*, learned Counsel for the Respondents has submitted that:

i. Learned DRAT has rightly considered and held that the Petitioner Bank has classified the account as NPA prior to expiry of more than 90 days.

ii. Merely because the learned DRT agreed to the legal submissions made on behalf of the Respondents that even otherwise the entire property cannot be put to sale, if one property can be sufficient to recover the dues of the bank, the same by no stretch of interpretation can be considered as consent.

iii. The finding of the learned DRAT with respect to non-compliance of provisions of Section 13(3A) of the SARFAESI Act, non-compliance of requirement of Rules 8(6) and 9 of the Security Interest (Enforcement) Rules, 2002 [hereinafter referred to as "SARFAESI Rules"] while auctioning the property in question cannot be faulted and are purely in terms of settled law.

26. Learned Counsel for the parties have not made any other submissions.

ANALYSIS AND FINDINGS:

27. In the facts of the present case, the foremost issue that arises for determination is whether the Petitioner Bank's decision to classify the accounts of Respondent Nos.1 and 2 as NPAs on 31.03.2013 conformed with the 90-day requirement prescribed under the applicable regulatory framework.

28. It may be noted that, as of 31.12.2012, the Respondents' OD and CC accounts had become irregular, with the outstanding balances exceeding the sanctioned limits. The excess was neither marginal nor temporary. Proceeding on this basis, the Petitioner Bank invoked the governing prudential norms and declared the account as NPA.

29. The legal framework governing this issue is well-established. The Reserve Bank of India's ("RBI") prudential norms on Income Recognition, Asset Classification and Provisioning ("IRACP"), which have statutory force under Sections 21 and 35A of the Banking Regulation Act, 1949, provide that an OD or CC account becomes an NPA when the outstanding balance remains continuously in excess of the sanctioned limit or drawing power for more than 90 days. This obligation is mandatory and a bank cannot defer or postpone classification once the statutory period of continuous irregularity has elapsed.

30. The expression "more than 90 days" has been consistently understood to require the completion of a full 90-day period before classification. The computation begins from the date immediately succeeding the day on which the account first becomes irregular.

Courts have repeatedly held that the counting must be straightforward and arithmetical, without importing equitable considerations. If the irregularity continues unabated through the entire 90-day period, the account stands impaired in the eyes of the regulatory framework, and the Bank must classify it as NPA on the day following such completion.

31. Applying these principles to the facts at hand, the date on which the account first stood clearly irregular is not in serious dispute. As of 31.12.2012, the OD and CC limits had been breached and the account was already in excess. There is no record of the account being brought within sanctioned limits thereafter at any point during the months of January, February, or March in the year 2013. The computation of the 90 days must therefore commence from the day immediately following the said date, namely 01.01.2013. The calendar months of January, February, and March in 2013 contain 31, 28, and 31 days respectively, yielding a total of 90 days from 01.01.2013 to 31.03.2013. On this computation, 31.03.2013 represents the 90th day. Thus, the critical threshold mandated by the IRACP norms stands satisfied by the end of March 2013. The decisive question, however, is not the precise mathematical position of the 90th day, but whether the Petitioner Bank classified the account before the statutory period had elapsed. On the facts, it did not.

32. The Respondents have placed no material to show that the accounts were regularised, interest was serviced, or the account was otherwise brought within sanctioned limits at any point during the relevant period. The burden of showing incorrect classification lies on

the borrower once the Petitioner Bank demonstrates the existence of continuous irregularity, and that burden has not been discharged. The contemporaneous bank statements, which reflect a persistent excess throughout the months of January, February, and March 2013, confirm that the factual foundation for NPA classification stood firmly established.

33. Further, the Petitioner Bank declared the account as NPA on 31.03.2013. Even if this date is treated as the 90th day, classification on the very date of completion of the statutory period cannot be termed premature, especially where the irregularity is undisputed and where the declaration is contemporaneous with the expiry of the mandated timeframe. The prudential norms require classification after the account has remained irregular "for more than 90 days". When the 90-day period ends on 31.03.2013, the Petitioner Bank's act of classification on the same date or immediately thereafter would equally satisfy the regulatory requirement. In any event, the classification on 31.03.2013 falls at the outer limit of the permissible period, leaving no scope for alleging premature action. Assuming *arguendo*, that the said declaration was premature, there is nothing on record to show that the Appellant, even on the subsequent day, had taken any steps to infuse any monies to evidence an attempt to steer off such a declaration.

34. In view of the foregoing discussion, this Court is of the opinion that the Petitioner Bank adhered to the statutory and regulatory framework, correctly computed the 90-day period of continuous irregularity, and classified the accounts of Respondent Nos. 1 and 2

only upon expiry of the mandated period. The declaration of NPA on 31.03.2013 was accordingly lawful, justified, and in strict consonance with the RBI's prudential norms.

35. Further, in the order dated 16.04.2014, the learned DRT, on the specific submissions and consent of Respondent Nos.1 and 2, recorded that one of the mortgaged properties would be sufficient to secure the recovery of the outstanding dues. The learned DRT accordingly directed that only one property be put to auction. It thus stands established on record that Respondent Nos.1 and 2 had furnished explicit consent to the sale of a mortgaged property.

36. Thereafter, *vide* order dated 16.12.2014 passed in Appeal No. 303/2014, the learned DRAT directed the auction of one of the mortgaged properties while reserving liberty to the Respondents to bring a better purchaser within 30 days. The order further provided that, in the event the dues remained unpaid, the second property may also be put to auction. During the pendency of the said appeal, the concerned property was sold for a consideration of Rs. 2.14 crores against recovery dues of Rs. 1.06 crores, resulting in substantial recovery. The appeal was, therefore, disposed of as infructuous, with a direction to the learned DRT to adjudicate the issues raised in S.A. No. 325/2013 in accordance with law.

37. Further, even after the sale of the mortgaged property and the passing of the final order, the learned DRT, by order dated 13.04.2015, afforded yet another opportunity to Respondent Nos.1 and 2 to deposit the requisite amount in the event they intended to save

their mortgaged property. The record reflects that the Respondent Nos.1 and 2 were repeatedly granted adequate opportunity to comply with their obligations.

38. Upon dismissal of S.A. No. 325/2013, the Petitioner Bank proceeded to confirm the auction sale in favour of Respondent No.3, the auction purchaser. The title documents deposited with the Petitioner Bank were handed over along with the sale certificate on 30.09.2015. It is also relevant to note that during the pendency of S.A. No. 325/2013, the Petitioner Bank had instituted O.A. No. 347/2015 on 30.08.2015 for the recovery of Rs. 1,81,84,429/-, which was subsequently withdrawn in good faith upon the final disposal of the securitisation application.

39. In view of the above factual matrix, this Court finds that the learned DRAT failed to consider the explicit consent of Respondent Nos.1 and 2 to the auction of the mortgaged property, as well as their prior conduct throughout the proceedings. The record clearly demonstrates their participation in the sale process, and the learned DRAT ought to have duly taken these circumstances into account while passing the Impugned Order.

40. Additionally, the notice under Section 13(2) of the SARFAESI Act was issued only on 22.04.2013, i.e., subsequent to the classification of the account as NPA. Despite this intervening period, Respondent Nos.1 and 2 made no attempt whatsoever to regularize their account or to liquidate the overdue amounts. Hence, their continued default, even after the account had slipped into the non-

performing category, reinforces the correctness of the Petitioner Bank's action.

41. Further, when the borrower has expressly consented to the sale of the secured asset, the rigour of strict compliance with certain procedural safeguards under the SARFAESI Act and the SARFAESI Rules, particularly Rules 8 and 9, stands materially diluted. The statutory scheme of the SARFAESI Act undoubtedly mandates adherence to the requirements governing valuation, publication of sale notices, fixation of reserve price, and conduct of auction. However, the jurisprudence recognises that these safeguards are primarily intended for the benefit and protection of the borrower. Consequently, where the borrower voluntarily assents to the sale of the secured asset either by written consent, statements made before the learned DRT/DRAT, or by conduct amounting to unequivocal acquiescence, the borrower is deemed to have waived objections relating to minor irregularities in procedure, provided that no prejudice is shown to have been caused.

42. Therefore, such consent operates as a waiver of the insistence on strict procedural compliance, and the borrower cannot subsequently challenge the auction on grounds pertaining to valuation, publication, or related formalities, which were otherwise intended to safeguard his interests. Once the borrower has accepted that the secured creditor may proceed with the sale, the emphasis shifts from procedural exactitude to the substantive fairness of the process and the bona fides of the creditor. Thus, in circumstances where the borrower's consent is explicit and informed, the secured creditor's

action cannot be invalidated merely for technical lapses in observing Rules 8 and 9 of the SARFAESI Rules, unless mala fides or demonstrable prejudice is established.

43. Hence, in the facts of the present case, strict adherence to the procedural requirements under the SARFAESI Act and Rules 8 and 9 of the SARFAESI Rules cannot be insisted upon, as the sale of the secured asset was undertaken with the unequivocal consent of the borrowers, as duly recorded in the order dated 16.04.2014. Once such consent was furnished before the learned DRT/DRAT, the borrowers effectively waived their right to later challenge minor procedural deviations, and no material prejudice has been demonstrated. The sale, therefore, stands fortified by the borrowers' own voluntary submission, and no infirmity can be attributed to the secured creditor on the ground of technical non-compliance.

CONCLUSION:

44. In view of the aforesaid, the present Appeal is allowed. The Impugned Order is hereby set aside.

45. The present Appeal, along with the pending application, stands disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

DECEMBER 06, 2025/sp/sh