



**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP (C) No. 654/2024

Reserved on: 17.12.2025

Pronounced on: 30.12.2025

Uploaded on: 30.12.2025

Whether the operative part or full
judgment is pronounced: *FULL*

Nazir Ahmad Bhat, Aged 47 Years.

S/o Late Ghulam Rasool Bhat

R/o Nully Poshwari Tehsil Barbugh

Imam Sahib, District Shopian

...Petitioner(s)/Appellant(s)

Through: Mr. Tariq M. Shah, Adv. with Mr. Zahid Ahmad, Adv.

Vs.

1. Chairman/ Managing Director J&K Bank
Corporate Office,
Maulana Azad Road, Dalgate, Srinagar.
2. Zonal Officer, J&K Bank, South Zone, near SSP
Office, Pulwama.
3. Cluster Head, J&K Bank, District, Shopian.
4. Branch Manager, J&K Bank Branch Pinjoora,
District Shopian.
5. Union Territory of J&K through
Commissioner/Secretary to
Government, Revenue Department, Civil
Secretariat, Jammu/Srinagar.
6. Deputy Commissioner/Additional Deputy
Commissioner, Mini Secretariat, District Shopian.
7. Sub-Divisional Magistrate (SDM) ZainaPora
Shopian.
8. Sub-Divisional Police Officer (SDPO) ZainaPora
Shopian.
9. Tehsildar Barbugh Imam Sahib District Shopian.Respondent(s)

Through: Ms Insha Rashid, Adv.
Ms Taniya, Adv.

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

JUDGMENT

Per Sanjeev Kumar, J

1. The petitioner is a borrower in default of the J&K Bank and is aggrieved by the proceedings initiated for recovery of loan amount in terms



of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [“SARFAESI Act”], in particular, notice dated 13th April 2023 issued by the Authorised Officer of the Respondent Bank under Section 13 (4) of the SARFAESI Act 2002, read with Rule 8(1) of the Security (Enforcement) Interest Rules, 2002 [“Rules of 2002”], auction notice dated 22nd August 2023, confirmation of auction vide communication dated 14th September 2023 and a Sale Certificate dated 15th December 2023 issued by Respondent Bank in favour of Respondent No. 10, the auction purchaser. There is also a challenge laid by the petitioner to a criminal complaint dated 9th October 2023 made against the petitioner to the police.

2. Before we advert to the grounds of challenge urged by the learned counsel appearing for the petitioner, we deem it appropriate to state few facts as are germane to the disposal of this petition.

3. The petitioner initially approached Respondent Bank and availed Cash Credit Facility of Rs. 1,10,00,000 (Rs. One Crore and ten lacs only). Later, on the request of the petitioner, the aforementioned credit facility was enhanced to Rupees 1,45,00,000 (Rs. One Crore and forty-five lacs only). The aforesaid credit facilities were granted to the petitioner by Respondent Bank *inter alia* against following securities:

Nature of Security	Description
Primary	Hypothecation of fruit and fruit crops and book debts and receivables.
Collateral	<p>1. Land measuring 10 Kanals falling under survey no 53 min(05 Kanals), Khata No 56, Khewat No 13 and Survey No 456/5(05 Kanals), Khata No 1L6, Khewat No 25 situated at Nully Poshwari</p> <p>2. Land measuring 01 Kanal 03 ½ marlas falling under survey No. 176(11 Marlas), 320 (12 ½ Marlas) Khata No</p>



	56, Khewat No 13 situated at Nully Poshwari. 3. Mortgage of land measuring 03 Kanals 12 ½ Marlas falling under survey No. 696 min, Khata No 164, Khewat No 30 situated at Mouza Heff Chitttagam. 4. Third Party guarantee of Mr. Mohammad Yousuf Baba and Mr. Khurshid Ahmad Mir.
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4. It seems that after some time, the loan account became irregular on account of failure of the petitioner to repay the credit interest on time. Despite repeated requests and reminders by the bank, the petitioner failed to get his loan account regularised. The petitioner also failed to make payment of outstanding amount under the Loan Account despite having received several demands from the bank. The petitioner neither got his loan account regularised by making the requisite payment nor did he square his debt. This constrained the Respondent Bank to declare the loan account of the petitioner as Non-Performing Asset (NPA) on 31st of March 2019. The petitioner was called upon to pay outstanding amount, which he failed to pay. Faced with failure of the petitioner to clear its outstanding amount and liability towards the bank, proceedings under the SARFAESI Act, 2002 were set in motion by the Respondent Bank. Composite Demand Notice dated 27th of June 2019 under Section 13 (2) of SARFAESI 2002 was served upon the petitioner requesting him to discharge his liability in full within 60 days from the date of notice. Despite having received the demand notice dated 27th of June 2019, the petitioner did not bother to come forward and clear his outstanding dues.

5. The process of recovery was taken further. The Respondent Bank issued Possession Notice dated 13th of April 2023 in terms of Rule 8(1) and (2) and Appendix IV of the Rules of 2002 with respect to the property which was mortgaged by the petitioner by way of collateral security. After taking



over the possession, Respondent Bank issued e-Auction/Sale Notice dated 6th June 2023 putting the mortgaged properties to auction. In terms of the e-tender notice dated 6th of June 2023, a simultaneous notice in terms of Rule 9 (1) of the Rules of 2002 was also given to the petitioner to pay the dues of the bank outstanding against him in his loan account together with interest, charges, expenses etc. within 15 days from this notice. The bid was stated to be opened on 20th June 2023 at 3:00 PM. It seems that there was no response to the e-tender notice dated 6th June 2023, the Respondent-Bank issued fresh e-auction notice dated 28th of July 2023 fixing a date for opening of bids and conducting of e-auction on 21st August 2023. Once again, the petitioner was given time to pay the total outstanding amount of loan along with interest and other expenses before the date of e-auction. This was followed by an addendum to the e-auction notice issued on 22nd of August 2023, by virtue of which last date for submission of bid/EMD was extended to 11th of September 2023 and date of time of auction was rescheduled and fixed on 13th of September 2023.

6. In response to the auction notice, respondent No. 10 participated in the e-auction bidding process and was declared successful bidder for purchase of immovable property, i.e., land measuring 14 kanals and 16 marlas. The Respondent-Bank, having received the entire sale consideration, executed a Sale Certificate in favour of Respondent No. 3 on 15th of December 2023 which stands registered with Sub-Registrar, Zainapora.

7. After the entire process undertaken by Respondent Bank under the SARFAESI Act 2002 culminated into issuance of Sale Certificate in favour of Respondent No. 10 against consideration and its registration before the



Sub-Registrar, Zainapora the petitioner woke up to challenge the entire process i.e., e-auction and consequent sale of the mortgaged property by the Respondent Bank in favour of respondent No. 10.

8. The entire process of recovery undertaken by Respondent Bank under SARFAESI Act 2002, has been called in question by the petitioner on the ground that no notice under Section 13(2) of the SARFAESI Act 2002 was served upon him before issuing notice under Section 13(4), and, therefore, the entire process is vitiated, i.e., the petitioner was never given an opportunity to pay back the dues of the bank outstanding against him. The petitioner also finds fault with the manner in which the auction was conducted by Respondent-Bank.

9. It is argued that 30 days' time as is mandated by Section 13(8) of the SARFAESI Act 2002 read with Rule 8 and Rule 9 of the Rules of 2002 was never granted to the petitioner to redeem the mortgage and, therefore, the entire auction process culminating into issuance of Sale Certificate in favour of respondent No. 10 is vitiated in law and cannot be acted upon.

10. Having heard the learned counsel for the parties and perused material on record, we are of the considered opinion that the petitioner has no reasonable cause or justification to maintain this petition after having failed to clear its debt despite availing several opportunities from the Bank. Before we proceed further, we would like to put it on record that during the course of arguments, the learned counsel for the petitioner did not argue and press the relief of issuing Writ of Certiorari to quash the criminal complaint dated 9th October 2023 lodged by Respondent Bank with the Police and therefore we have not adverted to aforesaid aspect. We have, however, examined the



arguments of learned counsel for the petitioner to the extent that the auction of the mortgaged property conducted by Respondent Bank was not in consonance with law and therefore the petitioner cannot be deprived of the mortgaged property without giving him a reasonable opportunity of a minimum of 30 days to meet the demand raised by the bank on account of outstanding dues of loan. The learned counsel for the petitioner derives sustenance of his argument from the provisions of Section 13(8) read with Rule 8(1) and Rule 9(1) of the Rules of 2002.

11. The sole grievance projected by the learned counsel for the petitioner before us is that the mortgaged property could not have been put to auction sale without affording 30 days' time to the petitioner to clear the demand. In support of his arguments, learned counsel for the petitioner places reliance upon a judgment of Hon'ble Supreme Court in the case of **Mathew Varghese vs. M. Amritha Kumar & Ors. [2014 (5) SCC 610]**. On the strength of law laid down in the aforesaid judgment, it was argued that the provisions of SARFAESI Act 2002, in particular Section 13(8), cannot be invoked by the Respondent Bank unless the borrower is informed of the time and date of auction sale or transfer so as to enable the borrower to tender the dues of the secured creditor with all costs, charges and expenses and any such sale or transfer affected without complying with the said statutory requirement would be a constitutional violation and nullify the ultimate sale.

12. *Per contra*, the learned counsel appearing for the Respondent Bank would argue that the issue which is agitated by the learned counsel for the petitioner is no longer res-integra and has been set at rest in the elaborate judgment passed by the Hon'ble Supreme Court in **M. Rajendran & Ors.**



**Vs. KPK Oils and Proteins Private Limited and Others, 2025 LiveLaw
(SC) 931.**

13. Having bestowed our thoughtful consideration on the rival contentions, we are of a considered opinion that the issue raised in this petition needs to be examined in the light of judgment passed by the Hon'ble Supreme Court in the case of **M. Rajendran** (supra), in which it has been reaffirmed that the right of redemption of the borrowers under SARFAESI Act 2002 is extinguished on the date of publication of auction notice. The judgment further clarifies the meaning of the term "date of publication" under the SARFAESI Act 2002 and held that the date of publication of notice for the purposes of Rule 9(1) of the Rules of 2002 would be the expiry of 30 days' period to be calculated from the date of issuance of notice of sale, i.e., publication of public notice or service to the borrower, whichever is later. The expression "before the date of publication" used in Section 13(8) of the SARFAESI Act has been explained by the Supreme Court in para 170 to 178 which, for facility of reference are set out below:-

"170. We turn back to the provision of Section 13(8) of the SARFAESI Act. The amended provision of Section 13(8) attaches vital importance to the date of publication of notice for public auction, invitation of quotation or tender, or private treat, for the purpose of the right of redemption of the borrower. As per the plain language of the provision, the moment the notice for holding auction, obtaining quotation, inviting tender or conducting private treaty is "published", the borrower's right of redemption would be extinguished.

171. However, as already discussed, when the sale is undertaken by obtaining quotation or private treaty, then as per Rules 8 and 9 of the SARFAESI Act respectively, there is no requirement of publication of notice for such sale. In such circumstances, the expression "*before the date of publication*" used in the amended Section 13(8) is



frustrated, insofar as the sale is being through invitation of quotations or private treaty. The language couched in the provision of Section 13(8) makes no distinction between what mode or manner of sale is adopted by the secured creditor, insofar as the application of the said provision is concerned.

172. In the foregoing part of this judgment, we have explained how for the transfer of the immovable secured asset by way of lease, assignment or transfer, in any mode stipulated in Rule 8(5) a notice of sale is required. Rule 8(5) prescribes the different modes by which such secured asset may be transferred / sold by the secured creditor.

173. The subsequent rules, more particularly Rule 8(6), the Proviso thereto read with Rule 9(1) and Rule 8(7) respectively prescribe the manner in which the secured creditor is required to give the notice of sale for each mode of sale, enumerated in Rule 8(5). From a combined reading of these rules, it is manifest that the form and manner in which the notice of sale is required to be given would differ according to the mode of sale that is adopted.

174. We have explained that the mere difference or variation in the manner in which the notice of sale has to be given under each of the aforesaid rules, depending upon the mode of sale elected by the secured creditor, will not by itself constitute the said notices of sale, as distinct and separate. Although, the provisions under which the secured creditor is required to give the notice of sale differ, on the basis of the mode of sale chosen, and even though the manner in which they are to be given are also at variance with one another, yet all these separate modes of effectuating the notice for sale under Rule 8(6), the Proviso thereto read with Rule 9(1) and Rule 8(7), are nothing but part and parcel of one single composite intended “notice of sale”.

175. As already afore-stated, the term “notice of sale” is an umbrella term, which refers to and includes the giving of notice for sale by the secured creditor in all forms and manner that he is obliged in law to do, under the relevant SARFAESI Rules, depending upon the mode of sale elected by the secured creditor.

176. Similarly, despite the different mode or manner in which the notice of sale is to be given by the secured creditor in terms of Rule 8(6), the Proviso thereto read with Rule 9(1), and for that matter even Rule 8(7), are to be



construed to refer and mean parts of a single composite notice of sale, then irrespective of the variation in the manner in which each rule contemplates the giving of such notice of sale, the discord in the language of Section 13(8) of the SARFAESI Act, more particularly, the expression "*before the date of publication*" may be resolved, notwithstanding the absence of any actual publication of notice of sale in some modes of sale.

177. Thus, for the purpose of the amended Section 13(8) of the SARFAESI Act, the expression "*before the date of publication*" used therein, has to be construed to refer and mean the publication of a valid "notice of sale" for the secured asset, although such publication may vary depending upon the mode of sale chosen by the secured creditor.

178. The word "publication" used in Section 13(8) of the SARFAESI Act, has to be understood to mean and include the service, publication in newspaper, and the affixation and uploading of the "notice of sale", as may be required under the SARFAESI Rules. Wherever, the chosen mode of sale requires the secured creditor to effectuate the "notice of sale" in any or all of the aforesaid manner, as the case may be, the expiry of thirty-days as required under Rule 9(1) from the day when the secured creditor complies with the requirement of giving the notice of sale, as per the applicable rules, would be the date on which the secured creditor is said to have validly published the "notice of sale" and it would be this date on which the right of redemption of the borrower would stand extinguished."

(underlined by us)

14. From the judgment supra, we can summarise the position of law as enunciated by the Supreme Court as under:

(i) Rule 8(6), the proviso thereto, Rule 8 (7), and Rule 9(1) of the Rules of 2002 do not mandate separate notice of sale for transfer of secured assets under Rule 8(5). All modes of service, publishing, affixing and uploading notices form part of a single composite "notice of sale". The term "publication" in Section 13(8) encompasses all notice modes-service to borrower, newspaper publication, affixation, and uploading on website as



required under the Rules of 2002 and not merely newspaper advertisements.

- (ii) A 30-day gap requirement under Rule 9(1) does not create distinct characteristics between public notice in newspaper and notice served to the borrower. These 30 days are calculated from the date of issuance of notice of sale, i.e., "publication of public notice or service to the borrower whichever is later".
- (iii) The secured creditor may serve and publish the notice of sale simultaneously provided 30-day gap is maintained from the notice, publication, or affixation. The borrower's right of redemption is extinguished after 30 days' period following complete compliance with all applicable notice requirements.

15. That apart, the judgment rendered in **Mathew Varghese** (supra) relied upon by the learned counsel for the petitioner was rendered on Section 13(8) of SARFAESI Act as it stood prior to its amendment by Act 44 of 2016, wherein it was stipulated that if dues to the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further steps shall be taken by him for transfer or sale of that secured asset. The position of provision 13(8) as it stood prior to 2016 Amendment was that the borrower had full right to redeem the property by tendering all dues to the secured creditor, at any time before the date fixed for sale or transfer and the right of redemption conferred under section 13(8) of the SARFAESI Act 2002 was to repay the entire debt due to the secured creditor.



16. It is thus evident that prior to amendment to Section 13 of the SARFAESI Act 2002, in the case of **Matthew Varghese** (supra), the Hon'ble Supreme Court had applied the principles pertaining to redemption of mortgage as contained in Section 60 of the Transfer of Property Act, 1882 [“TPA”]. As is clarified by the Hon'ble Supreme Court in the case of **M. Rajendran**, the reason which impelled Supreme Court in **Matthew Varghese** (supra) in holding so was because it found no inconsistency between un-amended Section 13(8) of the SARFAESI Act 2002 and the general right of redemption under Section 60 of the TPA. The position however underwent a change after the 2016 Amendment.

17. The radical change brought about by amendment to Section 13(8) was to the extent that right of the borrower to redeem the secured asset stands extinguished, thereunder on the very date of publication of the notice for public auction issued under Rule 9(1) of the Rules of 2002. The right of redemption available to the borrower under the amended statutory regime now stands substantially curtailed and would be available only till the date of publication of notice under Section 9(1) of the Rules of 2002 and not till the completion of sale or transfer of secured asset in favour of the auction purchaser. The date of publication of notice has already been explained hereinabove.

18. When we examine the instant case in the light of legal position enunciated by the Hon'ble Supreme Court in **M. Rajendran**, we find that the first auction notice was issued by the respondent-bank on 6th June 2023 in which the petitioner was granted only 15 days and not the 30 days for paying the dues of the bank outstanding against him in his loan account, but



this auction notice was not taken to the logical end. Another notice for e-auction was issued on 28th July 2023 in which the date for conducting e-auction was fixed on 21st August 2023 and the petitioner was granted time to deposit the dues of his outstanding loan before the date of e-auction.

19. Admittedly, 30 days' time as mandated by Rule 9(1) was not granted to him. As a matter of fact, the e-auction notice dated 28th of July 2023 gives only 15 days' time to the petitioner to pay the amount. But this notice was followed by an addendum issued on 22nd August 2023 whereby the last date for submission of bid was extended to 11th of September 2023, and, therefore, date of auction was rescheduled to 13th of September 2023. The petitioner thus had a time with effect from 28th of July 2023 to 13th of September 2023 to clear his dues which he failed to do.

20. It is in these circumstances it is not an argument available to the petitioner that he was deprived of 30 days statutory period to clear his dues before the secured assets were put to auction. That apart, Rule 8 (6) and Proviso to Rule 9 (1) clearly provides that if the sale of immovable property by any one of the methods specified in sub-Rule 5 of Rule 8 fails and the sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than 15 days to the borrower for any subsequent sale.

21. Viewed thus, in the instant case, the first e-auction notice was issued on 13th of April 2023 and the e-auction was to take place on 20th of June 2023. Indisputably in the first e-auction notice, the respondent bank gave only 15 days instead of 30 days to the petitioner and, thus, violated Rule 9(1) of the Rules of 2002. However, there was no response to this tender-cum-



sale notice and the same was abandoned. Fresh e-auction notice was issued on 28th of July 2023 and by that time, the petitioner had more than 30 days to clear his dues which he did not clear. Be that as it may, the 28th July 2023 notice read with the addendum dated 22nd of August 2023, the petitioner had time to deposit the dues with effect from 28th of July 2023 till 13th of September 2023 on which date the e-auction was conducted.

22. It is in view of this fact situation, it cannot by, any stretch of reasoning, be said that the petitioner was deprived of an opportunity of 30 days to deposit the dues. The petitioner came to know that the secured assets would be put to auction on 6th of June 2023, whereas, the e-auction was conducted only on 13th of September 2023. The petitioner had more than three months instead of 30 days as stipulated in Rule 9(1) of the Rules of 2002 to deposit the dues and get the secured assets redeemed. The petitioner has miserably failed to do so.

23. For the foregoing reasons, we find no merit in this petition, the same is accordingly dismissed.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

30.12.2025

Altaf

Whether approved for reporting? Yes