

**IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD**

**Appeal Dy. No. 300/2019**

Gitesh Kumar, S/o Late Sri Parashuram Virani, R/o 91,  
Rekabganj, Mukeri Tola, Faizabad-224001

.....Appellant

Versus

1. Allahabad Bank, Stressed Asset Management Branch 1<sup>st</sup> Floor, Main Branch Building, Hazratganj, Lucknow, through its Chief Manager- 226001.
2. Allahabad Bank, Branch Office, Angoori Bagh, District- Faizabad- 224001.
3. District Magistrate, District: Faizabad- 224001.
4. M/s Rajeev Construction Company, through its Proprietor Rajeev Pratap Singh, R/o 3/19/71, Gaura Patti, Niyawan, District- Faizabad- 224001.
5. Rajeev Pratap Singh, S/o Sheo Pratap Narain Singh, R/o 3/19/71, Gaura Patti, Niyawan, District- Faizabad- 224001.
6. Akhilesh Pratap Singh, S/o Sheo Pratap Narain Singh, R/o 3/19/71, Gaura Patti, Niyawan, District- Faizabad- 224001.
7. Smt. Savita Singh, D/o Sheo Pratap Narain Singh, R/o 3/19/71, Gaura Patti, Niyawan, District- Faizabad- 224001.

.....Respondents

**Advocates, who appeared in this case:**

For the appellant	Shri A. P. Singh, Advocate
For the respondent-Bank	Shri P. N. Tripathi, Advocate
For the respondents- Borrowers	Shri Shivendra Tripathi, Advocate holding brief of Shri V. K. Pandey, Advocate

**JUDGMENT**

**Date of Pronouncement: 30.01.2026**

**JUSTICE R. D. KHARE, CHAIRPERSON**

1. The present appeal has been filed under section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") against the impugned order dated 11.09.2019 passed by DRT Allahabad, whereby S.A. filed by the respondents-borrowers has been disposed off setting aside the I.A. No. 1660/2019 and I.A. No. 1661 of 2019 filed by the appellant-Auction purchaser.

2. The brief facts of the matter are that the respondents no. 4 and 5 were granted financial assistance by the respondent-Bank. In order to secure the said facility, the respondents no. 4 to 7 executed an equitable mortgage deed in respect of the property in question by depositing the title deed with the respondent-Bank. Since the respondents-borrowers did not maintain the financial discipline, therefore, the account was classified as NPA and after issuance of demand notice and possession notice, the respondent-Bank issued auction-sale notice dated 21.01.2019 scheduling the auction of the property in question on 21.02.2019. The said notice was also published in two newspapers on 25.01.2019 and the property was sold in favor of the appellant.
  
3. It appears that prior to the aforesaid, the respondent-Bank obtained an order dated 19.01.2017 passed by the District Magistrate, Faizabad, which has been stated to have come in the knowledge of the borrowers in the last week of June, 2019, when the Tehsildar came and asked the borrowers to vacate their premises. Against the said order, the borrowers had filed a Writ Petition no. 19159 of 2019 before the Hon'ble High Court, Allahabad sitting at Lucknow, which was disposed off finally vide order dated 15.07.2019, copy of which is at page no. 89 of the paper book, with the liberty to the petitioner to approach the DRT under section 17 of the said Act. Accordingly, the present S.A. was filed by the borrowers challenging the order dated 19.01.2017 passed by the District Magistrate. The Tribunal below vide order impugned has disposed off the said S.A. rejecting the interim applications of the appellant and held that the respondent-Bank has not yet finalized the sale in favour of the highest bidder. Being

aggrieved by the said order, the present appeal has been filed by the appellant-Auction Purchaser.

4. Learned counsel for the appellant submitted that there is clear violation of Rule 9(9) of the Security Interest (Enforcement) Rules, 2002 ("hereinafter referred to the Rules, 2002"). It was further contended that pursuant to the auction dated 21.02.2019, the appellant deposited the entire sale consideration within the time as framed under the Act and Rules made there under, but the respondent-Bank had not issued sale certificate in favour of the appellant. It was further contended that the borrower had submitted before the Bank one time settlement proposal along with Rs. 2.00 lacs after issuance of sale notice, but the same was declined. Thereafter, the borrower filed the present S.A. without impleading the auction purchaser as party, in which the order passed by the District Magistrate under section 14 was challenged. But the Tribunal below without issuing the notice to the auction purchaser has passed the order impugned although the Tribunal below has noted that the sale has already taken place and the entire sale consideration has been deposited. It was further contended that the Tribunal below vide order dated 06.08.2019 at page no. 110 of the paper book had granted the interim relief in favour of the respondents-borrowers that subject to deposit of Rs. 5.00 lacs within 7 days, the respondent-Bank will neither dispossess the applicant from the secured asset in question nor will issue sale certificate in favour of the auction purchaser till the next date of hearing, whereas the auction-sale was not subject matter before the Tribunal below.
5. It was further contended that the appellant had no notice about the deposition of the amount by the borrower and

he came to know about the same at very belated stage and even after that, he moved an application before the Tribunal below for impleadment as respondent in the array of parties of the S.A. and for opportunity of hearing, but the same was rejected vide order impugned.

6. It was further contended that once the sale has been conducted by the Bank and the entire sale consideration or part thereof has been accepted, the sale would be deemed to have been confirmed. It was thus argued that after accepting the amount from the borrower, the redemption has been given to the borrower and the draft, which was deposited by the appellant, was returned to him pursuant to the order passed by the Tribunal below, which could not be done, but the same has not been encashed by the appellant. In support of his contention, the learned counsel has relied upon a judgment passed by the Hon'ble Supreme Court in Celir LLP Vs. Bafna Motors Pvt. Ltd.
7. It was also contended that the borrower had filed a W.P. No. 19159 of 2019 before the Hon'ble High Court, which was disposed off on 15.07.2019 (at page 89 of paper book) permitting the borrower to file S.A. Pursuant to the said order, the S.A. was filed challenging the entire proceedings initiated by the Bank under the SARFAESI Act and the order dated 19.01.2017 of the District Magistrate passed u/s 13(4) of the SARFAESI Act, wherein it was undertaken that the entire outstanding amount shall be deposited in one go, but they did not deposit the same. As such, the Tribunal below has erred in permitting the borrowers to redeem their property by depositing the outstanding amount of the Bank. Thus the order impugned is not sustainable and the appeal filed by the appellant may be allowed.
8. Learned counsel for the respondent-Bank submitted that the respondent-Bank issued e-auction sale notice, which

was published in the newspapers on 25.01.2019, scheduling the auction of the property in question on 21.02.2019, in which the appellant was declared as highest bidder, but it could not deposit the bid amount within the stipulated period as prescribed under the Act and Rules made thereunder. It was further contended that on the request of the appellant, the respondent-Bank extended the time to deposit the remaining 75% of the bid amount vide letter dated 02.03.2019. It was also contended that vide order dated 15.07.2019 the Hon'ble High Court, Allahabad directed the borrowers to approach the Tribunal below and accordingly, the present S.A. was filed by the borrowers, in which the Tribunal below vide order dated 06.08.2019 directed the borrowers to deposit the dues of the Bank. It was further contended that the Tribunal below while passing the order impugned has considered every aspect of the case and balance of convenience in favour of the borrowers holding that the sale was not finalized in favour of the highest bidder. It was lastly contended that pursuant to the said order, the respondent-Bank returned back the bid amount to the appellant through demand draft dated 27.09.2019, which was received by the appellant, as per the letter dated 01.10.2019 given by the appellant to the Bank, copy of which is placed at page no. 12 of the counter affidavit of the Bank and further, the respondent-Bank vide letter dated 01.10.2019 informed the appellant about not issuing the sale certificate and deposition of the amount by the borrower. It was thus contended that the appellant is not entitled to any relief, since the borrowers have availed the remedy of right of redemption. It was, therefore, prayed that the appeal filed by the appellant may be dismissed.

9. Learned counsel for the respondents-borrowers submitted that after coming to know about the sale notice dated 21.01.2019, they contacted the chief manager of the appellant-Bank and offered settlement, to which the Bank agreed and as such the borrower deposited Rs.2.00 lacs on 15.02.2019, but later on the same was refused by the Bank vide letter dated 16.02.2019. It was further contended that the respondents-borrowers came to know about the physical possession of the property in question pursuant to the order dated 19.01.2017 passed by the District Magistrate u/s 14 of the SARFAESI Act. It was also contended that the Bank returned the down payment of Rs.2.00 lacs to the borrowers, which was deposited as upfront amount along with compromise proposal. It was further contended that the answering respondents along with their respective families are residing in the house in question.
10. Learned counsel further submitted that pursuant to the order dated 06.08.2019 passed by the Tribunal below, the borrower deposited Rs.5.00 lacs with the bank and submitted a proposal before the Bank for depositing the remaining amount and the Tribunal below vide impugned order dated 11.09.2019 disposed off the S.A. directing the borrower to deposit the same within 15 days, which was deposited on 26.09.2019 through RTGS. It was further contended that thereafter, the respondent-Bank returned the bid amount of Rs.30,61,000/- to the appellant vide letter dated 27.09.2019. It was thus contended that the appeal filed by the appellant is not maintainable, as the appellant has already received his total auction amount. It was, therefore, prayed that the appeal may be dismissed as not maintainable. 

11. I have considered the rival contentions of the learned counsels for the parties and perused the material available on record.
12. It is true that the total auction amount of Rs. 30,61,000/- has been returned by the Bank by way of demand draft in the name of the auction purchasers, but mere refund of the amount cannot preclude the auction purchasers to exercise the legal rights accrued in their favour and the auction purchasers by receiving such amount have not waived their rights to challenge the order and get the issue adjudicated on merits.
13. It is also true that the factum of return of amount has not been mentioned in the appeal, but the learned counsel for the appellants has stated that the draft of refund was received on 01.10.2019, but the same was never encashed. Although, the appeal was filed on 26.09.2019 before this Tribunal, but the contention advanced by the learned counsel for the appellant cannot be said to be unreasonable. Hence the appellant cannot be denied to decide this appeal on merits.
14. Now coming to the scrutiny of impugned order, there is no dispute on the points that the subject property was auctioned in favour of the appellants for Rs. 30.61 lacs and they have deposited 25% of the bid amount on the date of sale and the remaining within the period as extended by the Bank vide letter dated 02.03.2019 and accordingly, the same was deposited, as it is admitted by the respondent-Bank in sub-para (i) of para 13 of the written argument.
15. Now, the question arises, as to whether at this stage, the borrower had right to redeem the property in question and the Tribunal below could allow the same or not?
16. In this regard, Section 13(8) of the SARFAESI Act says as under:

*"Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets."*

17. From the above, it is clear that the property can be redeemed by the borrower/mortgager at any time but prior to the publication of sale notice. In the present case, the sale notice was published in the newspapers on 25.01.2019 and the property was sold on 21.02.2019. Thus the respondent-borrower could have redeemed their property only up to 24.01.2019 by depositing the dues of the Bank along with cost and expenses, but in the present case, the borrower has deposited the entire dues of the Bank on 26.09.2019 through RTGS for redeeming their property in question, which is evident from Annexure No. 4 to the reply of respondents no. 4 to 7. Thus there is clear violation of Section 13(8) of the aforesaid Act.
18. The finding given by the Tribunal below in the order impugned that the respondent-Bank has not yet finalized the sale in favour of the highest bidder i.e. appellant, is contrary to its order dated 06.08.2019, because in para 7 of the said order itself, copy of which is placed at page no. 14 of the reply of the borrowers, it is clearly mentioned that "secured asset has already been sold on failure of payment of entire dues by the applicants and successful bidder has already deposited the entire sale consideration with the respondent-Bank." As such, the Tribunal below while passing the order impugned has erred in allowing the respondents-borrowers to redeem the property in question by depositing the dues payable to the Bank, which could not be allowed because the property was already sold and entire sale consideration was also received by the Bank from the auction purchaser. With regard to the sale, the common practice in the society/public is that once the sale

is settled and advance is made by the purchaser to the seller, none of them can go back from the said sale. If the purchaser goes back, the money as advanced towards the said sale is forfeited by the seller. Similarly, there is provision under Rule 9(5) of the Security Interest (Enforcement) Rules, 2002 also, which says "*In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit to the secured creditor all claim to the property or to any part of the sum for which it may be subsequently sold.*"

19. The Tribunal below by allowing the borrowers to deposit the amount has not assigned any reason. This way the Tribunal below has allowed the redemption of the property without considering the stage of proceedings and right of redemption of the borrower. Further, no specific infirmity as such was pointed out in the proceedings of the bank.
20. Further, even for exercise of the discretion, the Tribunal below is required to exercise the same judicially and the order cannot be passed in arbitrarily manner curtailing the rights of the deserving litigants. In the instant case as stated above, the right of the auction purchasers was accrued in the property in question on the date when 25% of the bid amount was deposited by the appellant-auction purchasers. However, in the present case, the Tribunal below vide order impugned has allowed the borrowers to redeem their property after deposition of the remaining 75% of the bid amount also. Thus the impugned order is not sustainable being perverse and arbitrary in nature.
21. In view of the discussions as recorded above, the impugned order dated 11.09.2019 passed by the Tribunal below is set aside and the appeal filed by the appellant is allowed with no order as to costs.

22. The appellant is directed to deposit the auction amount of Rs.30.61 lacs with the respondent-Bank within 15 days and after receipt of the same, the Bank shall issue the sale certificate in favour of the auction purchasers within 15 days thereafter. Since the demand draft of the auction amount issued by the respondent-Bank is stated to have not been encashed and the said money is lying with it, therefore, no interest is being awarded on the said amount. However, if the said demand draft was encashed by the appellant, the auction purchaser shall pay the interest @ 8% p.a. simple on the said amount from the date of encashment till the date of payment.
23. The respondent-bank is also directed to refund the amount of the borrowers along with interest @ 8% p.a. simple within 30 days from today, which was deposited pursuant to the orders of the Tribunal below.
24. A copy of this judgment be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal.

  
**CHAIRPERSON**

VN Giri,PS