



WEB COPY



W.P.Nos.32958 & 32016 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 10.03.2023

Orders Pronounced on : **12.04.2023**

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.Nos.32958 & 32016 of 2022

and

W.M.P.Nos.31942, 31467, 31468 of 2022

1.M/s.Sri International,
Represented by its Partner, Mr.N.Ramalingam,
Doing Business at
No.6/A, Gayathri Nagar,
1st Street, Palayakkadu North,
Uthukulli Road,
Tirupur – 641 601.

2.Mr.N.Ramalingam
3.Mrs.R.Valarmathi
4.Mrs.R.Arukkani

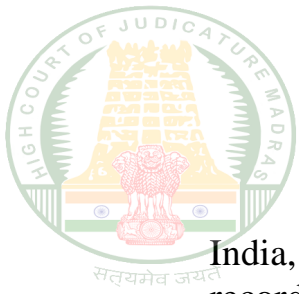
... Petitioners

Versus

1.M/s.Central Bank of India,
No.2, Court Street,
Tirupur – 641 601.

2.E.Muthurathinasabapathy
3.R.Umarani
4.K.Anitha

... Respondents



W.P.Nos.32958 & 32016 of 2022

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 24.11.2022 passed by the Debts Recovery Appellate Tribunal, Chennai in RA.(SA).No.17 of 2022, and quash the same and consequently set aside the sale held on 04.09.2020.

For Petitioners : Mr. Om Prakash, Senior Counsel
for Mr.A.Thiyagarajan

For Respondents : Mr. M.L.Ganesh (for R1)

: Mr. A.R.L.Sundaresan, (for R2 to R4)
Additional Solicitor General of India.
For M/s. B.A.Sujay Prasanna

COMMON ORDER

HON'BLE ACTING CHIEF JUSTICE & D.BHARATHA CHAKRAVARTHY, J.,

A. The Petitions:

The writ petitioners have filed these two writ petitions challenging the common order dated 24.11.2022 passed by the Debts Recovery Appellate Tribunal, Chennai, in R.A.(SA).No.17 of 2022 and R.A.(SA).No.18 of 2022, respectively.

B. The brief facts of the case :

2.The first petitioner is a partnership firm and the second and third petitioners are its partners. They availed packing and cash credit loan



W.P.Nos.32958 & 32016 of 2022

facility from the first respondent in the year 2017 and the said loan facilities were also renewed by a sanction letter dated 29.03.2019 to the tune of Rs.4 crores and the fourth respondent stood as a guarantor. Four properties were mortgaged as collateral security for availing of the said facilities. The petitioners failed to repay the amount as per schedule and as such the loan accounts became irregular and it was classified as Non-Performing Asset on 25.11.2018.

WEB COPY

2.1 Thereafter, a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (in short, the Act), was issued on 10.02.2020 and symbolic possession was taken under Section 13(4) of the Act on 21.04.2020. While so, a sale notice was issued for sale of mortgage properties. On 31.07.2020, the date of auction sale was fixed on 04.09.2020.

2.2 The writ petitioners aggrieved by the said measures filed S.A.No.263 of 2020 to set aside the sale notice dated 31.07.2020. Since there was no Presiding Officer in the Debts Recovery Tribunal, the



W.P.Nos.32958 & 32016 of 2022

petitioners approached this Court by way of W.P.No.11948 of 2020 and by

an order dated 01.09.2020, this Court disposed of the writ petition with the

following order:-

“3. From the facts submitted it appears that the sale is scheduled to take place on 04.09.2020. Therefore, some interim order will have to be passed in favour of the petitioner so as to enable the petitioner to get further orders before the Tribunal in the pending application or by way of filing a fresh application as the petitioner may choose.

4. In such view of the matter, the writ petition stands disposed of directing the respondents to proceed with the auction but not to confirm the sale till 08.09.2020. The petitioner can move the Tribunal seeking appropriate order in the pending application or by filing a fresh one which can be taken up for hearing on 08.09.2020. No costs. Consequently, connected miscellaneous petitions are closed.”

2.3 Thereafter, the petitioners moved the S.A.No.263 of 2020 before the Tribunal and by an order dated 07.09.2020, the Tribunal ordered that the Bank shall not confirm the sale on condition that the petitioners make a deposit of a sum of Rs.2 crore. It is relevant to extract the order of the Debt Recovery Tribunal, which reads as follows:-

*“SA.263/2020, 07.09.2029
Ld. Counsel Mr.G.Mathanasclan is appearing*



WEB COPY



W.P.Nos.32958 & 32016 of 2022

for Applicants.

Ld. Counsel Mr.V.Sairam is appearing for Respondent Bank.

*Emergent Petition in I.A.No.1025/2020:
Petition allowed.*

Stay Petition in IA No. 1026/2020:

Ld. Counsel for the Applicant submitted that the property was sold to very substantial lower amount and the Hon'ble High Court has granted an interim order not to confirm the sale till 08.09.2020. The Applicant is also willing to deposit a substantial amount to the loan account, as already the applicant has submitted an OTS proposal to the bank. Even then while it was pending, the bank has sold the property. Thus, an interim relief may be granted.

Ld. Counsel for the Respondent Bank submitted that the properties involved in the SA is sold for a sum of Rs.95,21,000/and the auction purchaser paid 25% of the bid amount. The applicant was not servicing the loan account properly. The due from the Applicant as claimed in the notice u/s 13 (2) is Rs.3,89,31,614/-.

Considering the interim order granted by the Hon'ble High Court in the case, that the sale of the property shall not be confirmed till 08.09.2020 and also the willingness of the Applicant to deposit a substantial amount, this Tribunal is of the view that, the Applicant has to be given an opportunity to show his bonafde. Thus, it is directed that the Applicant has to make a deposit of a sum of Rs.2.00 crores with the Respondent Bank within four weeks from today and till receipt of the same, the bank shall not confirm the sale of the property, which was held on 04.09.2020.



WEB COPY



W.P.Nos.32958 & 32016 of 2022

In the meanwhile, the Applicant is also directed to implead the auction purchaser in the case. Call on 06.10.2020.”

(emphasis supplied)

2.4 The petitioners once again approached this Court by way of C.R.P.(PD).No.1800 of 2020, challenging the said order dated 01.10.2020, and the said Civil Revision Petition was disposed of with the following direction:-

“The petitioners have come forward to file this Civil Revision Petition challenging the conditional order imposed by the Debts Recovery Tribunal on the premise that the appellate Tribunal is not functioning.

2. Heard the learned counsel appearing for the parties.

3. Mr.M.L.Ganesh, learned counsel appearing for the first respondent submitted that the appellate Tribunal has started physical hearing from 21.09.2020 onwards. The petitioner has not even filed the appeal. From the documents filed, it is seen that there was some difficulty in hearing the appeal earlier, which situation is not in existence as of now.

4. Thus, considering the above, we give liberty to the petitioners to file the appeal before the Debts Recovery Appellate Tribunal within a period of two weeks from the date of receipt of a copy of this order. As and when the same is filed, the appellate Tribunal shall number it and hear the same on merit. Till such time, status quo as on today shall be maintained. We



WEB COPY



W.P.Nos.32958 & 32016 of 2022

also take note of the fact that the auction has already taken place and the successful bidder has deposited 25% of the bid amount.

5. The Civil Revision Petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.”

2.5 Thereafter, the petitioners moved an appeal before the Debts Recovery Appellate Tribunal in A.I.R.S.A.No.105 of 2020, in which, Debts Recovery Appellate Tribunal passed the following order on 19.10.2020:-

“...Taking into consideration the rival contentions of the parties and the present pandemic situation, the Appellants are directed to deposit a sum of Rs.1.50 Crores in two equal instalments, the 1st instalment of Rs.75 Lakhs on or before 17.11.2020. Thereafter will deposit the 2nd instalment within next four weeks.

In the moment the amount is deposited, the Appellants are entitled for protection. In the event of failure in complying with the order on pre-deposit, the Appeal shall stand disposed of automatically for want of mandatory compliance. IA 276/2020 is disposed of.”

2.6 Challenging the said order passed in the waiver application, the writ petitioners again filed the C.R.P.No.2187 of 2020 and while taking into consideration the auction sale, this Court passed the following order:

(12) In the light of the fact that after



WEB COPY



W.P.Nos.32958 & 32016 of 2022

satisfaction of the dues, a sum of Rs.40 Lakhs is still available at the hands of the respondent-Bank. This Court reduces the second instalment of Rs.75 Lakhs to Rs.35 Lakhs and the revision petitioners are directed to deposit a sum of Rs.35,00,000/- [Rupees Thirty Five Lakhs only] by way of second instalment with the Registrar, DRAT, Chennai, within a period of two weeks from the date of receipt of a copy of this order/uploading of this order in the website, failing which, the modified order passed herein, would stand automatically vacated without any reference to this Court and in the event of compliance of the order, nothing would remain for further adjudication in A.I.R.SA.No.105 of 2020 pending on the file of DRAT, Chennai, for the reason that the said Appeal has been preferred against the interim order, which came to be modified by this order passed in this Civil Revision Petition.

(13) The petitioners herein shall file a Memo, immediately on compliance of the modified order passed by this Court today in this Civil Revision Petition, before DRT at Coimbatore and upon receipt of such Memo 9 <http://www.judis.nic.in> CRP.NO.2187/2020 from the petitioners herein, the DRT, Coimbatore, shall accord priority and dispose of SA.No.263 of 2020 as expeditiously as possible, preferably within a period of three weeks thereafter.

(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.

(emphasis supplied)



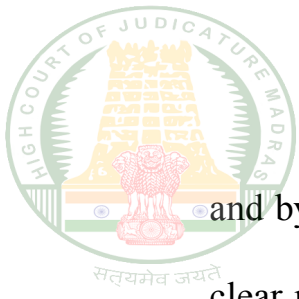
W.P.Nos.32958 & 32016 of 2022

2.7 Thereafter, both the Securitisation Appeals were taken up for final disposal and by an order dated 31.03.2022, the Debts Recovery Tribunal, Coimbatore, dismissed the same. On the same day, the sale was confirmed in favour of respondents No.2 to 4/the auction purchasers.

2.8 On the same day, immediately the sale was confirmed and upon receipt of sale confirmation letter dated 31.03.2022, as per the request of the auction purchaser, their fixed deposit amount lying with the first respondent bank was credited towards the balance sale consideration of 75% .

2.9 The Sale Certificate was issued in favour of the auction purchasers on 18.04.2022 and the same was also registered as Document No.2041 of 2022, at the office of the Sub-Registrar, Tiruppur District, on the same day.

2.10 Thereafter, the present appeals in RA.S.A.Nos.17 & 18 of 2022 respectively, were filed by these writ petitioners, challenging the order of the Debt Recovery Appellate Tribunal, which dismissed both their appeals



W.P.Nos.32958 & 32016 of 2022

and by a common order dated 24.11.2022. It found that there was a 30 days clear notice before the sale and further held that the auction sale in favour of respondents No.2 to 4 was in order as the sale was confirmed only on 31.03.2022 and the balance 75% of the amount was paid within 15 days as mandated under Rule 9(4) of the Security Interest (Enforcement) Rules, 2002 (in short, the Rules).

WEB COPY

2.11 The Debt Recovery Appellate Tribunal, also found that since there was an interim order not to confirm the sale and the interim order was vacated only by the dismissal of the securitization appeal, on 31.03.2022, it found no merits in the appeals filed by the writ petitioners, and therefore, dismissed the appeals.

2.12 When writ petitions were filed before this Court, this Court passed an interim order of status quo on condition that the writ petitioners/ borrowers must pay the entire balance amount within one week time. Accordingly, petitioners paid the entire balance amount due to the bank and submitted a compliance report dated 02.12.2022. It is at this stage the matter



is taken up for argument.

WEB COPY

C. The Submissions:

3. *Mr.Omprakash*, learned Senior Counsel appearing on behalf of the writ petitioners would submit that the borrowers have not left the matter unagitated. They had approached the DRT, at the earliest point of time, challenging the sale notice. Pending the proceedings, now they have paid the entire amount due, therefore, he would submit that firstly the sale in favour of the auction purchasers is illegal and violative of Rule 9(4) of the rules. As the auction purchasers did not pay the balance 75% of the amount within 15 days from the date of the order of this Court in C.R.P. No.2187 of 2020 i.e., 15 days with effect from 15.12.2020, and the balance 75% being paid only on 31.03.2022, the auction sale itself is invalid. Further, the petitioners being the borrowers having paid the entire amount due should be permitted to redeem the property from the bank. As a matter of fact, the entire amount has been paid along with the further interest till the date of payment. The learned Senior Counsel also relied upon the Judgment of the Andhra Pradesh High Court in *Concern Readymix, rep. by its Proprietor*,



W.P.Nos.32958 & 32016 of 2022

Smt. Y. Sunitha Vs. Authorised Officer, Corporation Bank and Another¹,

WEB COPY

to contend that the right of redemption is also otherwise available as per the provisions contained under the Transfer of Property Act. He would further submit that the possession of the property is still with the writ petitioners/borrowers. In spite of the application under Section 14 being filed to take physical possession of the property, no steps have been taken till date and the borrowers continued to be in possession of this property. The learned Senior Counsel also relied upon the judgment of the Hon'ble Supreme Court of India, in **Pal Alloys & Metal India Private Limited and Others Vs. Allahabad Bank and others²**, wherein the view taken by Andhra Pradesh High Court was accepted by the Punjab and Haryana High Court. He, therefore, prayed that since the entire amount has already been paid by the writ petitioners and they should be permitted to redeem the property.

3.1 Opposing the above submissions, *Mr.M.L.Ganesh*, the learned Counsel appearing on behalf of the Bank would submit that firstly, these writ petitioners, being the borrowers, cannot pray for any equitable relief

¹ 2018 SCC OnLine, Hyd 783

² 2021 SCC OnLine P &H 2733



W.P.Nos.32958 & 32016 of 2022

before this Court as from the very date of borrowing they had been defaulting. As a matter of fact, they did not even route their payments through the first respondent/bank, in spite of such a specific agreement. When the bank authorities went for an inspection of the site, even the name of the concern, as "Sri International" was changed, and the name board with some other name, namely as "Apron Fashions" was found at the site. Thus, the borrowers are not simply defaulters but are wilful defaulters, and therefore, they do not deserve any consideration from this Court. Secondly, as per Section 13(8) of the Act, the right of redemption is available only till the date of publication of the auction notice, and once the same is published, there is no right. In any event, the Hon'ble Supreme Court of India, in *Shakeena and Another Vs. Bank of India and Others*³, has categorically held that such right of redemption will no longer be available once the sale is complete and the sale certificate is issued in favour of the auction purchaser.

3.2 He would, therefore, submit that immediately after the dismissal of the applications filed before the DRT, the sale was confirmed, and the sale certificate was issued and registered. Hence the title has passed on to

³ 2019 SCC OnLine SC 1059

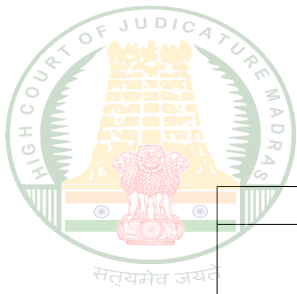


W.P.Nos.32958 & 32016 of 2022

the purchaser and the right of redemption is completely lost and all arguments on the basis of right of redemption have to be rejected by this Court. He would further submit that a perusal of the interim orders granted by this Court, DRT as well as the DRAT (which are extracted supra), it would be clear that there was a stay of confirmation of the sale. Only after the interim orders got vacated upon the dismissal of the Securitization Appeal on 31.03.2022, the sale could be confirmed. Rule 9(4) of the Rules clearly envisages the payment of balance 75% within 15 days only from the date of confirmation of sale. Therefore, there was no irregularity, whatsoever in the confirmation of the sale or the payment of the entire sale consideration by the auction purchasers.

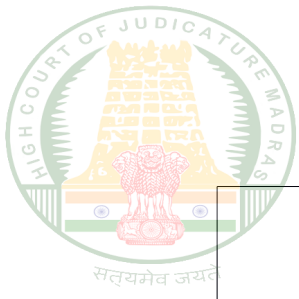
3.3 The learned Counsel would also rely upon the following Judgments for the propositions mentioned against them :

S.No.	Citation	Case law	Held
1.	(2019) 2 SCC 198	<i>M/s.Hindon Forge Pvt. Ltd. &Anr. Vs. State of Uttar Pradesh</i>	The remedy of an application under Section 17(1) is available immediately after the measures under Section 13(4) have been taken by the Bank against the borrower and there is no distinction under the act in respect of symbolic and actual



WEB COPY

			possession
2.	(2017) 4 SCC 735	Canara Bank Vs. M.Amarender Reddy &Anr.	Once 30 days clear notice is given and the said period is not utilised by the borrower, thereafter, he cannot come forward with a prayer for redemption
3.	2008 (1) CTC 660	K.Chidambaramanic kam Vs. Shakeena	Para.Nos.10.9, 11.5.1, 11.5.3.2 & 11.5.4 “...Fourthly, the right to redeem the mortgage, as provided in Section 60 of the Transfer of Property Act, is, of course, a very valuable right possessed by the mortgagor. At the same time, such a right to redeem the mortgage can be exercised before it is foreclosed, or the estate is sold. It has been held that the mortgagor can adopt the course provided under Section 60 of the Transfer of Property Act only before the mortgagee has filed a Suit for enforcement of the mortgage and not thereafter...”
4.	2019 SCC Online SC 1059	Shakeena Vs. Bank of India &Ors.	Para.No.16.3 “...the sale of the secured asset in public auction as per section 13(4) of SARFAESI Act, which ended in issuance of a sale certificate as per rule 9(7) of the Rules is a complete and absolute sale for the purpose of SARFAESI Act and the same need not be registered under the provisions of the Registration Act.”
5.	2019 SCC Online	Baby Saha	Para.No.27



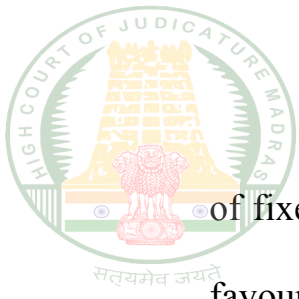
WEB COPY



W.P.Nos.32958 & 32016 of 2022

	Cal 5427	<i>Vs. Bank of India</i>	“...Both amended and unamended provisions of Section 13(8) of SARFAESI Act are very clear to reveal that right of redemption may be exercised before the sale takes place.
6.	(2022) 5 SCC 168	<i>Bank of Baroda Vs. M/s.Karwa Trading Compnay&Anr.</i>	Para.No.17 “...it is directed that on a public auction being finalised and the mortgaged property is sold by the Bank the borrower has to hand over the peaceful and vacant possession of the property to the Bank and/or the auction-purchaser”.
7.	(2018) 5 SCC 491	<i>Dwarika Prasad Vs. State of Uttar Pradesh</i>	Examined Section 13(8) of the SARFAESI Act and held the interpretation in line with Section 60 of the TP Act. That is, the right of redemption is available to the mortgagor unless it stands extinguished by an act of parties.

3.4 *Mr.A.R.L.Sundaresan*, learned Senior Counsel appearing on behalf of the respondents No.2 to 4/the auction purchasers, would submit that in this case, upon publication of the auction notice, the auction purchasers have duly participated and upon being the successful bidders, deposited 25% of the bid amount on the date of sale itself. As a matter of fact, even in respect of the balance 75%, they had made provision and the entire money was ready and lying with the first respondent/bank, in the form



W.P.Nos.32958 & 32016 of 2022

of fixed deposits. The moment the confirmation of sale was issued in their favour on 31.03.2022, they immediately requested the first responder/bank to appropriate the balance 75% of sale consideration from their fixed deposits and accordingly, the amount was appropriated and hence, have paid the entire amount on the same day of confirmation of the auction. The sale certificate was also issued and the same has been duly registered with the Office of the Sub-Registrar, Tiruppur. Thus, the title has passed on to the auction purchasers, and therefore, after the title has passed on to the auction purchasers, there was no question of payment of the balance outstanding by the borrower that too after filling of the writ petition before this Court, and there is no right of redemption available to the writ petitioners. As a matter of fact, while obtaining the interim order from this Court for depositing the entire amount, the matter was misrepresented by the writ petitioners/borrowers, as if the sale certificate was not registered, while it was actually registered and the said fact was known to them. Had the said fact was brought to the notice of this Court, this Court would not even have directed them to deposit the entire balance amount. Therefore, the learned Senior Counsel would pray that the writ petitions be dismissed.

WEB COPY



W.P.Nos.32958 & 32016 of 2022

WEB COPY

3.5 In support of this submissions, apart from relying upon the judgment of the Hon'ble Supreme Court of India, in *Shakeena v. Bank of India case* cited *supra*. For the proposition that the right of redemption extinguishes on issuance of sale certificate, the learned Senior Counsel also relied upon the judgments, in *Bank of Baroda Vs. Karwa Trading Company and Another*⁴, and *S.Karthik and Others versus in N.Subhash Chand Jain and Others*⁵, and submitted that on payment of the auction price, peaceful possession should be handed over to the auction purchaser and would therefore, request that the writ petitions be dismissed.

D. The Point for Consideration:

4. We have considered the rival submissions made on either side and perused the material records of this case.

4.1 In this case, the auction purchasers have paid the entire sale

⁴ (2022) 5 SCC 168

⁵ 2021 SCC OnLine SC 787



W.P.Nos.32958 & 32016 of 2022

consideration and the borrowers have paid the entire loan amount due with

interest pending the writ petition. Therefore, the following question arises

for consideration in these writ petitions :

"Whether the writ petitioners, the original owners of the property/mortgagors, can be permitted to redeem the properties in the teeth of the sale in favour of respondents No.2 to 4 and the registration of the sale certificates in their favor ?"

E. The Discussion & Findings :

5. On consideration of the materials on record and the submissions made on either side, we answer the question in the affirmative, and our reasons are as follows.

5.1 Firstly, the sale and the issuance of sale certificate in favour of respondents No.2 to 4, is clearly in violation of Rule 9(4). Originally the sale was held on 04.09.2020 and by the Order passed by this Court dated 01.09.2020, which is extracted supra, the first respondent/bank was directed to proceed with the auction, but, not to confirm the sale till 08.09.2020. The same order was continued by the DRT and the Status Quo was also continued in the second round in C.R.P.No.1800 of 2020. As a matter of



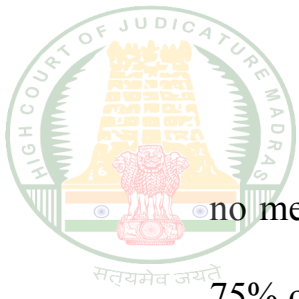
fact, the said protection was continued by the DRT by its order dated 19.10.2020, on specific conditions.

5.2 However, this Court in C.R.P.No.2187 of 2020, modified the said order not to confirm the sale, and ordered that it will be open for the respondent/bank to accept the balance sale consideration from the auction purchasers, but, however, further steps should not be taken till the disposal of the S.As. Even though the order has been extracted above at the risk of repetition, we extract paragraph 14, once again hereunder:

"(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."

5.3 Therefore, immediately after the order when it was open for the bank to confirm the sale, and to receive the balance 75% sale consideration, the bank as well as the auction purchaser went on to interpret the said order, as if, the confirmation of sale was still stayed.

5.4 If the confirmation of sale remained stayed, then there would be



W.P.Nos.32958 & 32016 of 2022

no meaning for this Court to have expressly ordered to receive the balance

75% of the amount. Thus, on proper reading of all the interim orders which are extracted seriatum supra, it would be clear that initially there was an order of stay of confirmation of sale, but, this Court by the above order dated 15.12.2020 had permitted the bank even to confirm the sale and receive the 75% of the amount and only further proceedings that is the issue of sale certificate and registering of the sale certificate etc., would remain stayed.

5.5 If the order of this Court is to be read to continue the stay on confirmation of sale, then the entire paragraph 14 which is extracted above would become redundant. The parties cannot be permitted to read or interpret the orders of this Court in their own way, that too in a way so as to render any particular direction in order otiose and redundant. As a matter of fact, if the entire order is read in total, this Court had even taken into account the entire sale consideration to be paid by the auction purchasers while calculating the waiver amount and the condition to be imposed.

5.6 Even if they had any doubt, they ought to have approached the



W.P.Nos.32958 & 32016 of 2022

Court, and clarified the position. In that view of the matter, when the sale is supposed to have taken place on 04.09.2020, the respondent/bank having got an order in their favour on 15.12.2020, cannot remain silent for over a period of 15 months i.e., up to 31.03.2022, to confirm the auction, and thereafter get the balance sale consideration of 75%, and such delay is directly in violation of the Judgment of the Hon'ble Supreme Court of India, in *Mathew Varghese Vs. M.Amritha Kumar and Others*⁶ more particularly the mandates laid down in paragraphs 34 & 35. We find that the finding of the DRAT that there was stay of confirmation of sale till the disposal of the S.As, as factually incorrect and the dismissal of the appeal of the writ petitioners was on the said basis and accordingly the order of the DRAT is unsustainable. Once the sale in favour of respondents No.2 to 4, is invalid, the writ petitioners are entitled for the right of redemption.

5.7 Secondly, the owner of the property can exercise his right of redemption by making the entire outstanding amount payable to the bank until the sale deed is registered or recorded in the registers of the Registering Authority. This is for the reason that most of the times the value

⁶ (2014) 5 SCC 610.



W.P.Nos.32958 & 32016 of 2022

of the property mortgaged with the bank have been appreciated manifold

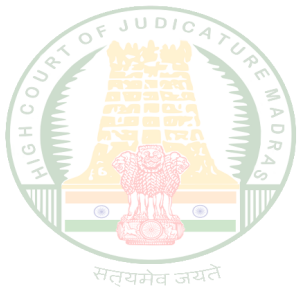
but the property mortgaged is sold at a throwaway price in the auction sale.

WEB COPY

Thirdly, when the secured creditor like the bank having advanced the loan gets back the money from the borrower, there is no justification to argue that the auction purchaser is having a superior right than the owner of the property, who comes forward to pay the bank entire amount.

5.8 Fourthly, our view is fortified by the judgment of the Hon'ble Apex Court in *Mathew Varghese Vs. M.Amritha Kumar and others [(2014) 5 SCC 610]*. For better appreciation, paragraph No.38 thereof is extracted below:-

“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

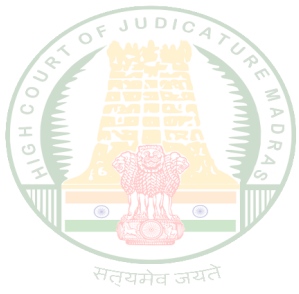


WEB COPY



W.P.Nos.32958 & 32016 of 2022

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* 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



WEB COPY



W.P.Nos.32958 & 32016 of 2022

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.”

Though the recovery of public dues should be made expeditiously, it should not frustrate the constitutional right and human right of a person to hold a property, when the borrower pays the entire money before the registration of the sale deed.

5.9 Fifthly, *fall of the hammer* argument relating to issue of sale certificate and registration thereof, also does not hold water in this case, since this is not a case where the borrower/mortgagor has kept quiet and approaching for redressal after the issuance of sale certificate and



W.P.Nos.32958 & 32016 of 2022

registration thereof. As a matter of fact, when the borrower has questioned the sale notices and also the sale proceedings, on the date, when their SARFAESI Appeals are dismissed, i.e., on 31.03.2022, without even waiting for the 30 days appeal period, if the bank, confirms the auction, and completes the sale and register the sale certificate, and if the bank is permitted to contend that the issuance of sale certificate and registration is over, then the very provision of the appeal remedy under the SARFAESI Act, and the further judicial review of this Court, all would become redundant. Therefore, the said argument that the sale certificate is issued and registered, cannot be accepted in this case. The borrower would still be entitled to question the validity of the sale certificate, grounds of sale, and if there is any subsequent violation of the statutory rules. Therefore, the principles laid down by the Hon'ble Supreme Court of India, in *Shakeena (cited supra)*, in a different context cannot be applied to the present factual scenario.

5.10. Further, we are also in complete agreement with the judgments



W.P.Nos.32958 & 32016 of 2022

of the Andhra Pradesh High Court in ***Concern Readymix***, as well as the

Punjab and Haryana High Court in ***Pal Alloys & Metal India Private***

Limited, (*cited supra*), which hold that the amended Section 13(8) of the

SARFAESI Act, is only a restriction on the right of the mortgagee to deal

with the property, and is not exactly the same as the equity of redemption

available to the Mortgager. The said rights of redemption are governed by

the relevant provisions of the Transfer of Property Act, which do not stand

expressly excluded by the operation of Section 13(8) and also Rule 9 of the

rules. Rule 9 of the rules itself is captioned as “*Time of Sale, Issue of Sale*

Certificate and Delivery of Possession”. In this context it is to be noted that

the sale is effected as per Section 54 of the Transfer of Property Act, 1882,

by transferring of ownership, which would include possession/delivery of

property. Rule 9(9) of the Security Interest (Enforcement) Rules, 2002, also

makes it mandatory for the Authorized Officer to 'deliver the property' to

the purchaser. Taking symbolic possession or constructive possession is

different from delivery of property. It is useful and relevant to quote the

following passages from ***Salmond on Jurisprudence***⁷:

“*Accordingly the concept of legal possession*

⁷ Salmon on Jurisprudence, P.J. Fitzgerald, 12th Edn., Sweet & Maxwell,p.53,56



WEB COPY



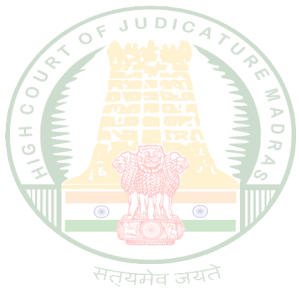
W.P.Nos.32958 & 32016 of 2022

parts company still further from the ordinary notion of possession, as law tends to invent instances of constructive possession, i.e., cases where something less than possession in one person is deemed possession in law, and where conversely the actual possession of some other party is reduced to something less than legal possession.

.....

The modes of acquisition are two in number, namely Taking and Delivery. Taking is the acquisition of possession without the consent of the previous possessor. The thing taken may or may not have been already in the possession of some one else, and in either case the take of it may be either rightful or wrongful. Delivery, on the other hand, is the acquisition of possession with the consent and co-operation of the previous possessor. It is of two kinds, distinguished by English lawyers as actual and constructive(p). Actual delivery is the transfer of immediate possession; it hands of one person to those of another.”

Therefore, the sale in favour of the auction purchasers will become complete in all respects, firstly on confirmation of sale, secondly on payment of balance 75%, thereafter on issuance of sale certificate and finally upon the delivery of the property. If that be the situation, then as per the provisions of Section 60 of the Transfer of Property Act, it cannot be said that the right of redemption stood extinguished.



WEB COPY

5.11. Further, the purpose of SARFAESI Act, was not to alter the law of mortgages or the redemption thereof, but it is only a special law for the bank (i) to determine the amount due from the mortgagor, (ii) sell the mortgaged property and to realize the dues, without intervention of the Court. Thus the primordial purpose is only the realization of the loan amount at the quickest possible time. In this case, the balance 75% of sale consideration was not realised and credited into the loan account within the prescribed time limit and there is a huge delay of about 15 months, while the interest is mulcted in the borrowers account. Though normally, the borrowers can only redeem the property as a matter of right as per Section 13(8) or anytime before the sale, we hold that (i) when there is a material irregularity/violation of Rules in the conduct of sale; (ii) when the borrower has been contesting the matter right from the inception; and (iii) when the borrower also had deposited the entire loan amount, the borrower will be entitled to redeem the property and the auction purchaser cannot insist upon the property but will only be entitled to the refund of his entire amount with due interest thereon. Additionally, in the instant case the *Covid-19* pandemic



W.P.Nos.32958 & 32016 of 2022

also intervened. In such an exceptional circumstance, we are reminded of

the famous words in the iconic English case of *Vernon Vs. Bethel*⁸ that

“....*This court, as a court, of conscience, is very jealous of persons taking securities for a loan, and converting such securities into purchases....*” The

Hon'ble Supreme Court of India, in *Mathew Vargese (cited supra)*, has

categorically held that the violation of the Rules would tantamount to

deprivation of the right to property otherwise than by due process of law

guaranteed under Article 300-A of the Constitution of India. In this case as

it was the duty of the bank to confirm the sale and to direct the auction

purchaser to pay the balance and credit the amount in the loan account, the

auction purchasers will only be entitled to interest at the rate of 12% per

annum from the date of deposit of amount till date of refund. As the delay is

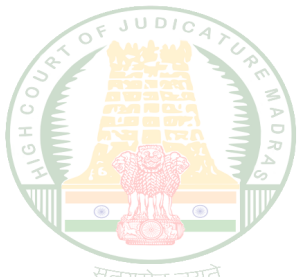
on the part of the borrowers who did not make payment of the entire amount

due and are being interested in saving their own property, they are liable to

pay such interest payable to the auction purchasers.

F. Result:

⁸ (1792) 2 Eden 110, 113: 28 ER 838, 839.



W.P.Nos.32958 & 32016 of 2022

6. In the result, the Writ Petition Nos.32958 & 32016 of 2022 are

allowed on the following terms:-

WEB COPY

(i) The common order of the Debts Recovery Appellate Tribunal passed in RA.S.A.No.17 of 2022 and RA.S.A.No.18 of 2022, dated 24.11.2022, is set aside;

(ii) The auction sale held in favour of the respondent No.2 to 4, on 04.09.2020 is declared invalid and the consequential auction certificate, dated 18.04.2022 issued in favour of the respondents No.2 to 4, registered as Document No.2041 of 2022, at the office of the Sub-Registrar, Tiruppur District, is set aside;

(iii) Since the Petitioners have paid the entire balance outstanding, dues along with interest, the petitioners are entitled for the receipt of discharge of the entire mortgage loan in their favour and hence, the first respondent/ bank shall issue the same, and also deliver the title deeds, which are in their possession, and the first respondent/ Bank shall execute the cancellation of the mortgage deed before the concerned Sub-Registrar



Office;

WEB COPY



W.P.Nos.32958 & 32016 of 2022

(iv) The auction purchasers will be entitled to the entire sum of Rs.1,40,05,000/- + Rs.1,85,08,000/- + Rs.1,22,70,000/- + Rs.47,38,000/- in all totalling to Rs.4,95,21,000/- with interest at the rate of 12% per annum, from the date on which the amounts were deposited, till the date of refund;

(v) The first respondent/bank shall calculate the interest amount due to the respondents Nos.2 to 4, and inform the same to the writ petitioners, by sending a communication within one week from the date of receipt of the copy of this order;

(vi) Upon receipt thereof, the writ petitioners shall also deposit the said interest amount within a period of one week therefrom;

(vii) The first respondent/bank shall forthwith, on receipt of the copy of this order disburse the sale consideration paid by the respondent Nos.2 to



W.P.Nos.32958 & 32016 of 2022

4, and upon receipt of the interest portion from the writ petitioners shall also

disburse and payout the same to the respondent Nos.2 to 4/the auction purchasers;

(viii) There will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(T.R., ACJ.) (D.B.C., J.)

12.04.2023

Index : Yes/No

Neutral citation : Yes/No

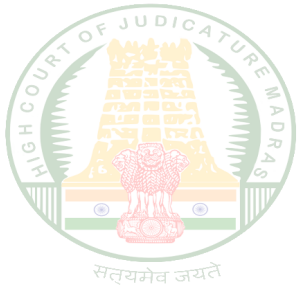
Speaking order/Non-speaking order

klt

To

1.The Debts Recovery Appellate Tribunal,
Chennai.

2.M/s.Central Bank of India,
No.2, Court Street,
Tiruppur – 641 601.



WEB COPY



W.P.Nos.32958 & 32016 of 2022

ACTING CHIEF JUSTICE

AND

D BHARATHA CHAKRAVARHY, J

klt

Pre-Delivery Order in

W.P.Nos.32958 & 32016 of 2022

and

W.M.P.Nos.31467 & 31468 of 2022

12.04.2023