A.F.R.
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HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - C No. - 1004411 of 2011

Smt. Rama Chaurasia W/o Shri Prakash Chaurasia
…..Petitioner(s)

Versus

Debut Recovery Appellant Tribunal Thro. its Registrar and 2 or
…..Respondent(s)

Counsel for Petitioner(s)	:	Ravi Singh, Ravendra Pratap Singh
Counsel for Respondent(s)	:	C.S.C., Alok Saxena, Devi Prasad Maurya, Jagdish Prasad Maurya, Ram Raj, Rama Kant Srivastava, Sandeep Kumar, Vinay Shankar Srivastava

Court No. - 4

HON'BLE IRSHAD ALI, J.

1) Heard Sri Ravi Singh, learned counsel for the petitioner, Sri Shiv Ganesh Singh, learned Additional Chief Standing Counsel for respondent No.1 – State, Sri Alok Saxena, learned counsel for respondent No.2 – Bank and Sri J.P. Maurya, learned counsel for respondent No.3 – auction purchaser.

2) The present writ petition has been filed on following prayer(s):

> *"i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 18/07/2011 passed by Debut Recovery Appellate Tribunal, Allahabad i.e. opposite party no.1 contained as Annexure No.1 to the present writ petition.*
>
> *ii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties not to give effect of the impugned order dated 18/07/2011 passed by Debut Recovery Appellate Tribunal, Allahabad i.e. opposite party no.1 contained as Annexure No.1 to the present writ petition.*
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> *iii) issue a writ, order or direction in the nature of mandamus commanding the opposite party no.2 accept the*

loan amount and handover the land in question alongwith the paper book to the petitioner.

iv) issue such other order or direction, which this Hon'ble Court deem fit and proper under the facts and circumstances of the case may kindly also be passed in favour of the petitioner.

v) Cost of the writ petition may also be awarded to the petitioner."

3) By means of the present writ petition, the petitioner has challenged the appellate order dated 18.07.2011 passed by the opposite party no.1, whereby the order dated 17.08.2010 passed by the Debts Recovery Tribunal, Lucknow, in Securitisation Application No.SA-137 of 2007 was set aside and the appeal preferred by the respondent Bank was allowed. The petitioner has assailed the appellate order on the grounds, *inter alia*, that the Appellate Tribunal failed to consider the agricultural nature of the land in question, the alleged non-service of statutory notices under Sections 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act") and the deposit of the entire auction amount by the petitioner before issuance of the sale certificate. The petitioner has also alleged that the Bank arbitrarily returned the bank drafts deposited by her despite her willingness to discharge the outstanding liability.

4) According to the petitioner, she and Smt. Kiran Chaurasia are joint owners of the land in dispute, which they purchased through a registered sale deed dated 27.02.1987. The petitioner has asserted that the land was purchased for agricultural purposes and that its agricultural character continued to be reflected in the relevant revenue records.

5) The petitioner has stated that a partnership firm, namely, M/s Chaurasia Traders, was being run and controlled by two partners, namely, Shri Dhruv Prakash Chaurasia, stated to be the brother-in-law of the petitioner's husband in the relationship described in the petition and Shri Ashok Kumar Chaurasia, also related to the petitioner's husband.

The said firm obtained a credit loan of approximately Rs.30 lakh from the opposite party no.2 - Bank in the year 2003.

6) The petitioner has further stated that, at the time of sanctioning the aforesaid loan, her land in question was mortgaged with the Bank as security for the loan facility extended to M/s Chaurasia Traders. According to her, she had mortgaged the property only to facilitate the grant of the loan to the aforesaid partners and was not herself the principal borrower.

7) The petitioner has stated that, at the time of the loan transaction, she was residing at 279/75, Pan Dariba, Lucknow. In the year 2003, she shifted to Faizabad to reside with her husband and claims to have informed the respondent Bank in writing about the change of residence, requesting that any future correspondence be sent to her address at Faizabad. A photocopy of the letter dated 09.07.2003 has been annexed to the writ petition as Annexure No.3.

8) The petitioner has alleged that, in October 2007, when she visited the residence of her husband’s brother, she came to know that the Bank had issued a notice under Section 13(2) of the SARFAESI Act in connection with the loan account of M/s Chaurasia Traders. Upon acquiring such knowledge, she contacted the Bank and allegedly receiving no satisfactory response, sent a letter dated 12.10.2007 by registered post seeking information regarding the loan transaction and the proceedings initiated by the Bank. A photocopy of the said letter has been annexed as Annexure No.4 to the writ petition.

9) The petitioner has stated that, upon subsequently contacting the Bank, she was informed that the loan account of the borrower had been classified as a non-performing asset (NPA). She has disputed the validity of such classification by referring to the statement of account of M/s Chaurasia Traders, according to which transactions in the account continued up to 31.05.2006 and a further transaction was recorded on 30.06.2006. On this basis, the petitioner has alleged that the Bank had initiated proceedings under Section 13(2) of the SARFAESI Act without

validly classifying the account as an NPA in accordance with the applicable guidelines of the Reserve Bank of India. A photocopy of the statement of account dated 04.05.2007 has been annexed as Annexure No.5 to the writ petition.

10) The petitioner has further alleged that, after issuance of the notice under Section 13(2) of the SARFAESI Act, neither she nor the actual borrowers received any notice under Section 13(4) of the said Act. According to the petitioner, the principal borrowers, namely, Shri Dhruv Prakash Chaurasia and Shri Ashok Kumar Chaurasia, also informed her that they had not received the aforesaid notice. She has, therefore, questioned the legality of the subsequent measures taken by the Bank for enforcement of the secured asset.

11) The petitioner has stated that, although the notice under Section 13(2) of the SARFAESI Act was issued in her name, the possession notice dated 18.11.2006 was issued in the name of Shri Dhruv Prakash Chaurasia. A photocopy of the possession notice dated 18.11.2006 has been annexed as Annexure No.6 to the writ petition.

12) The petitioner has further stated that, in February 2007, the Bank published an advertisement for auction of the land in question. She has alleged that the auction proceedings were undertaken without proper consideration of the nature and valuation of the property and without complying with the mandatory requirements of the SARFAESI Act. A photocopy of the relevant newspaper advertisement has been annexed as Annexure No.7 to the writ petition.

13) The petitioner has stated that, after the festival of Diwali, when she visited the land in question, she came to know that the Bank had proceeded with the auction and that the opposite party no.3 had emerged as the auction purchaser. Upon approaching the Bank, she was allegedly informed that the auction had already taken place and that the auction purchaser had deposited 25% of the sale consideration. The petitioner claims that she, thereafter, submitted a letter dated 27.11.2006 to the Branch Manager through registered post, expressing her willingness to

deposit the entire outstanding amount, together with interest and other expenses and requesting the Bank to accept the payment. A photocopy of the said letter has been annexed as Annexure No.8 to the writ petition.

14) The petitioner has further stated that, upon again approaching the office of the opposite party no.2, she was informed that, if she was willing to pay the amount, she could deposit it immediately through bank drafts. Accordingly, on 22.12.2007, the petitioner claims to have tendered bank drafts aggregating to approximately Rs.34 lakh, whereas the auction sale consideration was Rs.33 lakh. She has asserted that, to the best of her knowledge, the sale in favour of the opposite party no.3 had not been confirmed at the time when the drafts were tendered.

15) The petitioner has alleged that, despite her having tendered the entire amount claimed by her to be payable, the Bank returned all the bank drafts to her vide letter dated 07.01.2008, stating that the land had already been sold through the bidding process. According to the petitioner, the return of the drafts was arbitrary and contrary to Section 13(8) of the SARFAESI Act, as she had offered to discharge the entire liability before completion of the transfer of the secured asset. The petitioner has further asserted that the Bank’s action was intended to confer an undue benefit upon the auction purchaser. The letter dated 07.01.2008 and copies of the bank drafts have been annexed as Annexure No.2 to the writ petition.

16) The petitioner has placed reliance upon Section 13(8) of the SARFAESI Act and has contended that, where the entire dues of the secured creditor, together with the applicable costs, charges and expenses are tendered before completion of the sale or transfer of the secured asset in accordance with the statutory provision applicable at the relevant time, the secured creditor cannot proceed with the sale or transfer. On this basis, she has challenged the Bank’s refusal to accept the bank drafts and its decision to proceed with the auction in favour of the opposite party no.3.

17) The petitioner has further stated that the land in dispute, identified as Khasra No.13333-5A, situated at Village Sarosa Bharosa, Alamnagar, Lucknow, had been purchased for agricultural purposes and continued to be recorded as agricultural land in the revenue records. In support of this assertion, she has relied upon the relevant Khasra issued on 22.07.2011, a copy of which has been annexed as Annexure No.9 to the writ petition.

18) The petitioner has contended that Section 31(i) of the SARFAESI Act excludes agricultural land from the application of the Act in the circumstances specified therein. According to her, the Bank had no authority to enforce the mortgage by resorting to the provisions of the SARFAESI Act against the land in question, as the property continued to retain its agricultural character. She has further asserted that the land had not been declared as *abadi* or converted to non-agricultural use under Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act by the competent authority, namely, the Sub-Divisional Magistrate concerned.

19) The petitioner has stated that, after the Bank returned the bank drafts, she instituted Securitisation Application No.SA-137 of 2007 before the Debts Recovery Tribunal, Lucknow, under Section 17(1) of the SARFAESI Act, challenging the measures taken by the Bank for enforcement of the secured asset and the auction proceedings conducted in respect of the land in question.

20) The petitioner has stated that the Debts Recovery Tribunal, Lucknow, vide order dated 17.08.2010, allowed Securitisation Application No.SA-137 of 2007 and set aside the action taken by the opposite party no.2-Bank. A photocopy of the said order has been annexed as Annexure No.10 to the writ petition.

21) According to the petitioner, while allowing the securitisation application, the Debts Recovery Tribunal, Lucknow, examined the relevant records, including the Khatauni and found that the secured property continued to be recorded as agricultural land. The Tribunal observed, as pleaded by the petitioner, that the Khasra and Khatauni

were relevant revenue documents for identifying the property and determining its nature. It further noted that conversion of agricultural land to non-agricultural use required an order passed by the competent authority under Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act and that the Bank had not produced any such order on the record.

22) The petitioner has stated that, being aggrieved by the order dated 17.08.2010 passed by the Debts Recovery Tribunal, Lucknow, the opposite party no.2 - Bank preferred an appeal under Section 18 of the SARFAESI Act before the Debts Recovery Appellate Tribunal, Allahabad, registered as Appeal No.R-1224 of 2010.

23) The petitioner has challenged the appellate order dated 18.07.2011 on the ground that the Appellate Tribunal set aside the order of the Debts Recovery Tribunal, Lucknow, without properly examining the material on record or adequately considering the findings recorded by the Tribunal regarding the agricultural character of the property. According to the petitioner, the Appellate Tribunal itself proceeded on the premise that the land might be agricultural land but failed to return a clear finding on this material issue.

24) The petitioner has further alleged that the Appellate Tribunal observed that, since the petitioner held a 50 per cent share in the property, the Debts Recovery Tribunal, Lucknow, ought not to have set aside the entire auction and should instead have restricted the relief to her 50 per cent share. The petitioner has contended that the Appellate Tribunal, despite making the aforesaid observation, neither remanded the matter for fresh consideration nor conclusively determined whether the property was agricultural land and whether the Bank had lawfully exercised its powers under the SARFAESI Act.

25) The petitioner has also questioned the valuation and fairness of the auction proceedings. She has alleged that the Bank auctioned the property in the year 2007 without properly assessing its market value and has asserted that the value of the land at the relevant time was

approximately Rs.1.5 crore, whereas the auction was conducted for Rs.33 lakh. She has submitted that the alleged inadequacy of the sale consideration could be examined by summoning the relevant records.

26) The petitioner has further contended that the loan facility had been availed of by the principal borrowers, namely, Shri Dhruv Prakash Chaurasia and Shri Ashok Kumar Chaurasia, whereas the property subjected to auction belonged jointly to the petitioner and Smt. Kiran Chaurasia. According to the petitioner, she had furnished her property as security for the loan and was only a guarantor, while the actual borrowers were the partners of M/s Chaurasia Traders.

27) The petitioner has alleged that the Bank proceeded against her property without first taking appropriate steps to recover the outstanding loan from the principal borrowers or their assets. She has relied upon the statutory provisions and judicial pronouncements concerning the enforcement of secured assets and the liability of guarantors, contending that the Bank's action against her property was unlawful in the facts and circumstances of the case. She has also reiterated that the statutory notices under Sections 13(2) and 13(4) of the SARFAESI Act were not duly served upon her in accordance with law.

28) The petitioner has further stated that, after conducting the auction, the Bank issued a sale certificate in favour of the opposite party no.3, although the date of issuance of the certificate was not disclosed in the relevant documents relied upon by the petitioner. She has pointed out that, in paragraph 5.8 of the memorandum of appeal filed by the Bank before the Appellate Tribunal, the Bank stated that the auction sale had been confirmed and the sale certificate issued in favour of the auction purchaser on 24.01.2008, upon deposit of the entire auction consideration of Rs.33 lakh. The petitioner has alleged that the Bank did not annex the said sale certificate to its memorandum of appeal.

29) The petitioner has contended that, even according to the Bank's own pleading, the sale certificate was issued on 24.01.2008, whereas she had tendered bank drafts aggregating to approximately Rs.34 lakh on

22.12.2007. She has, therefore, asserted that her tender preceded the stated date of issuance of the sale certificate and that the Bank was not justified in returning the drafts without properly considering the statutory protection claimed by her under Section 13(8) of the SARFAESI Act. On this basis, she has questioned the legality of the confirmation of the sale and the subsequent issuance of the sale certificate in favour of the opposite party no.3.

30) The petitioner has alleged that the Bank's conduct throughout the proceedings, including its refusal to accept the bank drafts, its failure to resolve the dispute regarding the nature of the land and its decision to proceed with the auction, was arbitrary and contrary to the provisions of the SARFAESI Act. She has further alleged that the auction was conducted without proper valuation of the property, without due service of the requisite statutory notices and without first pursuing appropriate recovery measures against the principal borrowers.

31) The petitioner has reiterated that she remains willing to deposit the entire amount lawfully payable under the loan transaction, together with applicable interest and other permissible expenses, in accordance with the terms of the agreement executed between the borrowers and the Bank. She has alleged that, despite repeatedly communicating her willingness to settle the outstanding liability after acquiring knowledge of the recovery proceedings, the Bank declined to accept the payment and returned the bank drafts.

32) The petitioner has stated that, in view of the impugned appellate order dated 18.07.2011, the alleged violation of the statutory provisions governing enforcement of secured assets, the disputed agricultural character of the land, the alleged non-service of the requisite notices and the Bank's refusal to accept the amount tendered before the stated date of issuance of the sale certificate, she has been left with no other equally efficacious alternative remedy. Accordingly, she has invoked the writ jurisdiction of this Hon'ble Court under Article 226 of the Constitution

of India, seeking judicial review of the impugned appellate order and the consequential reliefs claimed in the writ petition.

33) Submission of learned counsel for the petitioner is that the impugned appellate order dated 18.07.2011 passed by the Debts Recovery Appellate Tribunal, Allahabad, is legally unsustainable, being vitiated by failure to adjudicate the material questions of law arising from the enforcement proceedings initiated by the respondent Bank under “SARFAESI Act”. The Appellate Tribunal was required to examine whether the statutory conditions precedent for invoking the coercive measures under the Act stood satisfied and whether the secured creditor had acted in conformity with the mandatory statutory procedure. The failure to return clear and reasoned findings on the material issues affecting the legality of the enforcement proceedings renders the impugned order amenable to judicial review under Article 226 of the Constitution of India.

34) He submitted that the first substantial question of law arising for consideration is whether the secured creditor could lawfully invoke the provisions of the SARFAESI Act in respect of the property in question when the petitioner specifically asserted that the property was agricultural land within the meaning of Section 31(i) of the Act. The statutory exclusion contained in Section 31(i) is substantive and cannot be rendered ineffective merely because the property has been mortgaged to secure a loan transaction. If the property falls within the statutory exclusion, the secured creditor cannot enforce its security interest against such property by resorting to the measures contemplated under Section 13 of the SARFAESI Act. The nature of the property was, therefore, a jurisdictionally material issue which required determination before the legality of the enforcement measures could be sustained.

35) His next submission is that the petitioner relies upon the settled principle of statutory interpretation that where the legislature expressly excludes a class of property from the operation of a statute, the authority exercising powers under that statute cannot disregard the exclusion or

enlarge its jurisdiction beyond the limits prescribed by law. The petitioner had relied upon the relevant *Khasra* and *Khatauni* entries to establish that the land continued to be recorded as agricultural land. The Debts Recovery Tribunal had considered the revenue record and recorded findings in favour of the petitioner. The Appellate Tribunal, while reversing the said decision, was required to examine the evidentiary and legal significance of those entries and determine whether the property attracted the exclusion under Section 31(i). A reversal without a proper determination of this foundational issue cannot be sustained merely on the basis of the existence of a mortgage or the default in repayment of the loan.

36) He further submits that the question whether land is agricultural land for the purposes of Section 31(i) of the SARFAESI Act must be determined on the basis of the relevant statutory provision and the evidence concerning the actual nature and use of the property. Revenue entries are relevant evidence, though their evidentiary value must be assessed with reference to the entire record. Equally, the absence of an order under Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act may be a relevant circumstance but cannot, by itself, be treated as an invariably conclusive test of the applicability of Section 31(i). The Appellate Tribunal was, therefore, required to determine the question in accordance with the applicable law and the material on record rather than leave the fundamental issue unresolved.

37) He submitted that the impugned appellate order is further assailable on the ground that it does not adequately resolve the question whether the statutory notices contemplated under Sections 13(2) and 13(4) of the SARFAESI Act were duly served upon the petitioner in accordance with law. The petitioner specifically disputed service of the notices and asserted that the possession notice dated 18.11.2006 was issued in the name of one of the principal borrowers, although the secured property jointly belonged to the petitioner and Smt. Kiran Chaurasia. The legality of the subsequent enforcement measures depended upon compliance with the statutory requirements applicable to

the secured creditor. The Appellate Tribunal was required to examine the relevant notices, the mode and proof of service, the identity of the persons upon whom service was legally required and the legal consequences of any established defect.

38) His next submission is that Sections 13(2) and 13(4) of the SARFAESI Act contemplate distinct stages in the enforcement process, and compliance with the requirements applicable at each stage must be independently examined. The issuance of a demand notice under Section 13(2) cannot, by itself, establish compliance with the requirements governing the subsequent measures under Section 13(4). The secured creditor must establish that the statutory conditions governing the measure actually adopted were fulfilled. Where service is specifically disputed, the issue cannot be decided merely on presumptions unsupported by the relevant record. The petitioner accordingly submits that the Appellate Tribunal ought to have determined the legality of the enforcement proceedings by reference to the statutory scheme and the evidence of service available on record.

39) He submitted that the classification of the loan account as a non-performing asset was also required to satisfy the applicable statutory and regulatory requirements. The petitioner had relied upon the statement of account reflecting transactions during 2006 and questioned the date and legality of the classification. The mere existence of entries in a bank account does not necessarily establish that the account could not lawfully have been classified as a non-performing asset, since the applicable norms require examination of the nature of the credit facility, the repayment obligations, the period of overdue amounts and the relevant prudential norms. Nevertheless, where the validity of the classification is specifically challenged, the secured creditor must demonstrate compliance with the applicable requirements. The legality of the subsequent measures cannot be insulated from judicial scrutiny if the statutory foundation for their initiation is shown to be defective.

40) He submitted that the Appellate Tribunal was also required to examine the legal effect of the tender of bank drafts aggregating to approximately Rs.34 lakh on 22.12.2007, particularly in view of the Bank's own assertion that the sale certificate was issued on 24.01.2008. The petitioner had offered an amount exceeding the stated auction consideration of Rs.33 lakh and asserted that the tender was made before completion of the sale in accordance with the applicable statutory provisions. The Bank's subsequent return of the drafts, by its letter dated 07.01.2008, raised a substantial question concerning the operation of Section 13(8) of the SARFAESI Act as it stood at the relevant time.

41) His submission is that Section 13(8) must be applied in the form in force on the date of the relevant enforcement proceedings. The petitioner does not contend that the mere preparation or unilateral tender of bank drafts, irrespective of the statutory conditions, automatically extinguished the secured creditor's rights. His submission is that the legal effect of the tender had to be determined by examining whether the amount tendered represented the entire dues of the secured creditor, together with the costs, charges and expenses lawfully payable, whether the tender was made within the applicable statutory period and whether the other requirements of the provision stood satisfied. The Appellate Tribunal could not lawfully reject this contention solely on the ground that the auction process had commenced or that the Bank had decided to proceed with the sale.

42) He next submitted that the distinction between the date of auction, the date of payment of the sale consideration, the date of confirmation of sale and the date of issuance of the sale certificate is material to the determination of the petitioner's claim under Section 13(8). These events cannot be treated as interchangeable without reference to the statutory framework and the applicable rules. The Bank's pleading that the sale certificate was issued on 24.01.2008, read with the petitioner's assertion that the bank drafts had been tendered on 22.12.2007, required the Appellate Tribunal to determine the legal consequences of the respective dates. The relevant question was whether the petitioner's tender satisfied

the statutory requirements governing redemption at the material time, not merely whether the auction had already been conducted.

43) He next submitted that the secured creditor's statutory powers are subject to the restrictions and conditions imposed by the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002. The fact that an auction purchaser has participated in the sale or that the Bank has subsequently issued a sale certificate cannot, by itself, cure an antecedent violation of a mandatory statutory requirement. The rights asserted by the auction purchaser must be considered in accordance with the applicable law, but such rights cannot validate enforcement measures which are otherwise established to be unlawful. The Appellate Tribunal was, therefore, required to consider the petitioner's challenge to the sale by examining the legality of the entire process and the legal consequences of any established non-compliance.

44) His submission is that the Appellate Tribunal's observation that the petitioner's interest in the property was limited to 50 per cent did not, by itself, furnish a legally sufficient ground for reversing the order of the Debts Recovery Tribunal in its entirety. The extent of the petitioner's proprietary interest and the legal effect of the mortgage over the property were matters requiring consideration in accordance with the title documents, the mortgage instruments and the applicable law. If only a divisible share was lawfully available for enforcement, the consequences of such limitation had to be determined on the basis of the legal rights of all co-owners and the terms and extent of the security interest. Conversely, if the security interest validly extended to the entire property, the legal position would have to be determined accordingly. The Appellate Tribunal could not substitute an observation regarding the petitioner's share for a reasoned adjudication of the parties' substantive rights.

45) He submitted that the Bank's right to proceed against the mortgaged property must be distinguished from the question of the petitioner's status as a principal borrower or a person who furnished

security for the loan. The fact that the loan facility was availed of by M/s Chaurasia Traders and that the petitioner was not the principal borrower does not, by itself, discharge a validly constituted mortgage or exclude the secured asset from lawful enforcement. Equally, the petitioner's liability and the Bank's enforcement rights cannot be determined without examining the mortgage documents, the terms of the security and the statutory conditions governing enforcement. The relevant legal question was whether the Bank had acted within the scope of its lawful security interest and in compliance with the SARFAESI Act.

46) He submitted that the petitioner does not rest her challenge solely on the proposition that the Bank was legally bound to exhaust its remedies against the principal borrowers before proceeding against the secured property. In the absence of a statutory or contractual restriction applicable to the transaction, a secured creditor is not ordinarily required to first exhaust its remedies against the principal borrower before enforcing a valid security or proceeding against a guarantor. The petitioner's sustainable legal contention is that the Bank's right to enforce the mortgage remained subject to the validity of the security, the extent of the interest created, the applicable statutory exclusions and compliance with the mandatory enforcement procedure. The Appellate Tribunal was required to examine these questions independently of the mere fact that the petitioner was not the principal borrower.

47) He submitted that the legality of the auction could not be sustained without due consideration of the statutory rules governing the sale of secured assets, including the applicable requirements relating to valuation, fixation of reserve price, notice of sale, publication and conduct of the auction. The allegation that the property valued at approximately Rs.1.5 crore was sold for Rs.33 lakh raises a question, which must be examined with reference to the applicable valuation material and the mandatory sale procedure. Mere inadequacy of price, in the absence of proof of a legally material irregularity, may not by itself be sufficient to invalidate an auction. However, where the petitioner specifically alleges non-compliance with mandatory requirements or a

sale conducted in a manner contrary to the governing rules, the competent tribunal must examine the relevant record and determine whether the sale is legally sustainable.

48) Learned counsel for the petitioner submits that the Appellate Tribunal, while exercising appellate jurisdiction under Section 18 of the SARFAESI Act, was required to consider the material findings of the Debts Recovery Tribunal and the grounds on which those findings were challenged by the Bank. Although the Appellate Tribunal was competent to reverse the order of the Debts Recovery Tribunal, such reversal was required to be supported by reasons demonstrating why the findings under challenge were legally or factually unsustainable. The existence of appellate jurisdiction does not dispense with the obligation to address material issues that determine the legality of the enforcement action. A failure to deal with substantial grounds and relevant evidence may render the resulting decision vulnerable to judicial review.

49) His submission is that the requirement to record reasons is an essential safeguard against arbitrary exercise of adjudicatory power. Where an order of the subordinate tribunal has been reversed on issues involving statutory jurisdiction, compliance with mandatory procedure and the rights in immovable property, the appellate authority must disclose the reasoning that supports its conclusions on the material issues. The impugned order is liable to be interfered with if, on examination of its actual reasoning, it is found that the Appellate Tribunal failed to determine the agricultural character of the property, the legality of the statutory notices or the legal effect of the tender under Section 13(8), despite those issues being material to the outcome of the appeal.

50) He submits that the statutory remedy under Section 17 of the SARFAESI Act is intended to provide an effective adjudicatory mechanism for examining whether the measures adopted by a secured creditor conform to the Act and the rules made thereunder. The jurisdiction of the Debts Recovery Tribunal is not confined to a formal

examination of the Bank's claim of default; it extends to determining whether the impugned enforcement measures were taken in accordance with law and to granting such relief, as is authorised by the statute. The Appellate Tribunal was, therefore, required to determine the legality of the measures challenged by the petitioner rather than treat the Bank's entitlement to recover its dues as conclusive of the legality of the particular enforcement process.

51) He further submits that the jurisdiction of this Court under Article 226 of the Constitution of India is not excluded merely because the dispute arises under the SARFAESI Act. At the same time, the existence of an alternative statutory remedy is a material consideration in the exercise of writ jurisdiction and does not cease to be relevant merely because a party alleges an error in the appellate decision. The petitioner's case for interference rests upon the alleged failure to adjudicate material statutory questions, the asserted disregard of mandatory legal requirements and the contention that the impugned order suffers from an error of law apparent from the record. The petitioner accordingly submits that this Hon'ble Court may examine whether the impugned order warrants interference within the recognised limits of judicial review.

52) He lastly submitted that the impugned appellate order dated 18.07.2011 cannot be sustained, if the record establishes that the Appellate Tribunal reversed the order of the Debts Recovery Tribunal without determining the applicability of Section 31(i), without examining compliance with the mandatory requirements governing the notices and enforcement measures, or without adjudicating the legal effect of the tender in the light of Section 13(8) as applicable at the relevant time. These are not merely peripheral factual disputes; they concern the statutory authority of the Bank to enforce the security and the legality of the measures by which the petitioner's property was brought to sale.

53) On the other hand, learned counsel for respondent – Bank submitted that the auction proceedings were undertaken in accordance with the procedure followed by the Bank for realization of its secured dues. The first sale notice in respect of the mortgaged property was published on 03.02.2007 in two newspapers, namely, Dainik Jagran and Indian Express, fixing the reserve price at ₹40,00,000/-. However, as the auction could not be finalized for want of bidders, the Bank issued a second sale notice on 22.03.2007 in Swatantra Bharat and Indian Express, reducing the reserve price to ₹32,00,000/-. The respondent Bank submits that the subsequent auction proceedings were undertaken in furtherance of its lawful right to enforce the security interest and recover the outstanding dues.

54) Learned counsel for the respondent Bank further submits that pursuant to the second sale notice dated 22.03.2007, respondent no.3, Sri Ajay Gupta, submitted his offer for ₹33,00,000/-, which was accepted by the Bank. It is contended that the acceptance of the offer was preceded by sufficient opportunities being afforded to the borrowers to settle the loan account and discharge their outstanding liability. In this regard, reliance is placed upon the communications dated 07.02.2007 and 19.06.2007 issued by the Bank, as well as the borrower's letter dated 24.05.2007 brought on record with the counter affidavit. According to the Bank, despite the opportunities so afforded, the borrowers failed to liquidate the outstanding dues.

55) It is further submitted that after acceptance of the offer made by respondent no.3, the Bank, vide communication dated 08.08.2007, called upon the auction purchaser to deposit the balance 75% of the bid amount within the stipulated period of one month. The auction purchaser, thereafter, deposited the remaining amount, which, according to the Bank's records, was kept in a suspense account. Learned counsel submits that the subsequent deposit of the balance consideration was in furtherance of the accepted bid and that the petitioner's subsequent offer could not, merely by being higher than the accepted bid, confer upon him an indefeasible right to have the sale proceedings reopened.

56) Learned counsel for the respondent Bank specifically submits that the petitioner's offer of ₹34,00,000/-, made on 24.12.2007, was not liable to be accepted merely on the ground that it exceeded the bid of respondent no.3 by ₹1,00,000/-. It is contended that the petitioner's offer was made after the bid of respondent no.3 had been accepted and the sale had been confirmed on 08.08.2007. The Bank further asserts that, as on 24.12.2007, the total liability outstanding in the loan account stood at ₹40,22,861.08, apart from the expenses incurred by the Bank. Consequently, according to the respondent Bank, the amount offered by the petitioner did not satisfy the entire liability required to be discharged for claiming the benefit of Section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

57) It is argued that the petitioner's reliance upon Section 13(8) of the SARFAESI Act cannot be considered in isolation from the statutory conditions governing redemption of the secured asset. The right of redemption must be exercised in accordance with the applicable statutory provision and within the legally prescribed period. Learned counsel submits that a mere offer to pay an amount lower than the entire outstanding liability, without satisfying the applicable statutory requirements, would not by itself invalidate an otherwise lawful auction sale. The respondent Bank, therefore, contends that the petitioner's offer dated 24.12.2007 did not furnish a legally sustainable ground to compel the Bank to abandon the sale in favour of respondent no.3.

58) Learned counsel for the respondent Bank further submits that the sale was confirmed in favour of respondent no.3 on 08.08.2007 and the sale certificate was subsequently issued on 24.01.2008. It is contended that the petitioner's subsequent offer, made after confirmation of the sale, could not automatically displace the rights accruing to the auction purchaser under the concluded sale proceedings. The validity of the auction proceedings, according to the Bank, must be examined with reference to the applicable statutory provisions and the material available

on record, and not merely by comparing the respective amounts offered by the petitioner and the auction purchaser.

59) On the question of the petitioner's entitlement to challenge the auction proceedings, learned counsel submits that the exercise of jurisdiction under Article 226 of the Constitution of India must be guided by the existence of a legally enforceable right and a demonstrated violation of law. The petitioner cannot claim interference merely because a subsequent offer was allegedly more advantageous to the Bank. Unless a material illegality, breach of a mandatory statutory requirement, or violation of the principles of natural justice is established, the auction proceedings cannot be set aside solely on the basis of a later offer.

60) Learned counsel for the respondent Bank submits that the supplementary affidavit has placed on record the material particulars available in the Bank's records concerning publication of the sale notices, acceptance of the bid, the subsequent demand for deposit of the balance consideration, confirmation of sale and issuance of the sale certificate. It is contended that these particulars, read with the counter affidavit and its annexures, demonstrate that the Bank acted in exercise of its statutory powers to recover the secured debt. Accordingly, the respondent Bank prays that the challenge to the auction proceedings be examined in the light of the governing provisions of the SARFAESI Act and that no relief be granted to the petitioner in the absence of proof of a legally sustainable ground for interference.

61) Learned counsel appearing on behalf of respondent No.3, the auction purchaser, submits that the petitioner had mortgaged the property in question with Canara Bank, Aminabad Branch, Lucknow, in the year 2003 as security for repayment of the loan availed by her. Upon the petitioner's failure to discharge the outstanding liability, the Bank initiated proceedings for realization of its secured dues and published a sale notice in February 2007. Despite the opportunity available to her to liquidate the outstanding liability, the petitioner failed to do so,

whereupon the secured asset was put to auction in accordance with the procedure adopted by the Bank.

63) It is further submitted that respondent No.3 participated in the auction proceedings and purchased the property in question upon acceptance of his bid. After completion of the requisite formalities, a sale certificate was issued in his favour on 24.01.2008. Learned counsel contends that the auction purchase and issuance of the sale certificate created legally enforceable rights in favour of respondent No.3, subject, of course, to compliance with the applicable statutory provisions governing the auction sale. The petitioner cannot seek to defeat such rights merely by expressing dissatisfaction with the outcome of the auction proceedings or by subsequently asserting a claim over the property.

64) Learned counsel for respondent No.3 submits that the petitioner instituted the present writ petition on 27.07.2011, whereas the auction proceedings had culminated in the issuance of the sale certificate on 24.01.2008. It is contended that the challenge to the auction proceedings must be examined in the light of the statutory remedies available to the petitioner and the settled principles governing interference with completed auction sales. Unless the petitioner establishes a material violation of a mandatory statutory provision, procedural illegality, or other legally sustainable ground for setting aside the sale, the rights of the auction purchaser cannot be displaced on mere allegations.

65) Learned counsel further submits that the petitioner's rights in the mortgaged property were subject to the security interest created in favour of the Bank. The petitioner could not, by executing subsequent sale deeds, convey a better title than that which she lawfully possessed, nor could any subsequent transaction, by itself, defeat the rights validly acquired by the secured creditor or the auction purchaser. The legal effect of any transfer made after creation of the mortgage must, therefore, be determined with reference to the subsisting mortgage, the

applicable provisions of law and the rights acquired pursuant to the auction proceedings.

66) It is further contended that the petitioner executed several registered sale deeds in favour of third parties in the years 2014 and 2015 in respect of portions of the property in question. These transactions were effected after issuance of the sale certificate in favour of respondent No.3 on 24.01.2008.

67) Learned counsel submits that the petitioner cannot rely upon transactions subsequently entered into by her to establish an indefeasible title against the auction purchaser. The validity and legal effect of those transactions must be determined in accordance with the applicable law and their mere registration cannot, by itself, establish that the petitioner retained a transferable title free from the consequences of the earlier mortgage and auction sale.

68) Learned counsel further submits that respondent No.3 has asserted his rights as the auction purchaser and has stated that he remains in possession of the property and has raised construction over a portion thereof. It is contended that the rights and interests claimed by respondent No.3 pursuant to the sale certificate cannot be ignored while considering the relief sought by the petitioner.

69) Learned counsel for respondent No.3 also refers to the criminal proceedings initiated on the basis of the complaint made by him, pursuant to which an FIR was registered against the petitioner and other persons under Sections 467, 468, 471, 419 and 420 of the Indian Penal Code. It is submitted that the allegations underlying those proceedings concern the subsequent transactions relating to the property and are relevant insofar as they disclose the nature of the dispute between the parties. However, the respondent acknowledges that the registration of an FIR, by itself, does not establish the guilt of the accused or conclusively determine the title to the property; the criminal allegations must be adjudicated independently in accordance with law.

70) Learned counsel for respondent No.3 submits that the petitioner cannot claim relief in disregard of the rights asserted by the auction purchaser under the sale certificate. The petitioner must establish an enforceable legal right and demonstrate a corresponding illegality warranting interference by this Hon'ble Court. In the absence of proof that the auction proceedings were vitiated by a breach of the applicable statutory requirements or other material illegality, the subsequent transactions relied upon by the petitioner cannot furnish a sufficient basis for invalidating the auction sale.

71) In view of the aforesaid submissions, learned counsel for respondent No.3 prays that this Hon'ble Court may decline to interfere with the auction proceedings and the sale certificate dated 24.01.2008, unless the petitioner establishes a legally sustainable ground for such interference. It is accordingly prayed that the writ petition be dismissed.

72) Learned Additional Chief Standing Counsel appearing for respondent No.1 – State (DRAT) submitted that the auction proceedings and the rights claimed by the auction purchaser are required to be examined in accordance with the applicable provisions of the SARFAESI Act, 2002 and the rules framed thereunder. He submits that the petitioner, having mortgaged the property as security for the loan, cannot seek to invalidate the auction merely on the ground that she subsequently offered a higher amount than the accepted bid, unless she establishes compliance with the statutory requirements governing redemption of the secured asset or demonstrates a material illegality in the auction proceedings.

73) He further submits that the issuance of the sale certificate dated 24.01.2008 and the subsequent transactions concerning the property must be considered in the light of the rights lawfully acquired by the parties and the applicable statutory provisions. The petitioner, having invoked the extraordinary jurisdiction of this Hon’ble Court under Article 226 of the Constitution of India, must establish a legally sustainable ground for interference with the impugned appellate order. In

the absence of any established violation of a mandatory statutory provision or other material illegality warranting judicial interference, the writ petition deserves to be dismissed.

74) I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

75) To resolve the controversy involved in the matter, relevant provisions of the SARFAESI Act are being quoted below:

> *"**13. Enforcement of security interest***
>
> *(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).*
>
> *[Provided that-*
>
> *(i)the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and*
>
> *(ii)in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee;]*
>
> *(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:*
>
> *(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;*
>
> *(b) [take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset: [Substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, Section 8 (30 of 2004), for Cl.(b) (w.e.f. 11.11.2004).]*
>
> *Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:*

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.]

Prior to its substitution, Clause(b) read;

(b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(8) [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,-

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this subsection, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.]

31. <u>Provisions of this Act not to apply in certain cases</u>

The provisions of this Act shall not apply to

(a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 (9 of 1872) or the Sale of Goods Act, 1930 (3 of 1930) or any other law for the time being in force;

(b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872 (9 of 1872);

(c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934

(24 of 1934);

(d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);

[* *] [Omitted '(e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;' by Act No. 44 of 2016.]*

(f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);

(g) [any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act)] [Substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 17, for "any properties not liable to attachment" (w.e.f. 11.11.2004).] or sale under the first proviso to sub-section (1)

of section 60 of the Code of Civil Procedure, 1908 (5 of 1908);

(h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;

(i) any security interest created in agricultural land;

(j)any case in which the amount due is less than twenty per cent. of the principal amount and interest thereon."

17. [Application against measures to recover secured debts]:

(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, 2[may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within fortyfive days from the date on which such measure had been taken:

3[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

4[Explanation.--For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

5[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction--

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

6[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

7[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,--

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

8[(4A) Where--

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,--

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]

Section 18 : Appeal to Appellate Tribunal

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal 1[under section 17, may prefer an appeal along with such fee, as may be prescribed]to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

2 [Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:]

3 [Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.]

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

76) On perusal of affidavit dated 31.10.2017 filed by Smt. Kiran Chaurasiya and upon consideration of the material brought on record and the submissions advanced by learned counsel for the parties, it transpires

that the petitioner and the deponent, Smt. Kiran Chaurasia, had jointly purchased the property in question from Moti Jheel Cooperative Housing Society on 27.02.1987 and subsequently mortgaged the same with Canara Bank in the year 2003 as security for repayment of the loan. Owing to non-payment of the loan, the Bank initiated proceedings for enforcement of its security interest and the property was put to auction. The auction purchaser, Dr. Ajay Gupta, was issued a sale certificate on 24.01.2008.

77) It further emerges from the affidavit of Smt. Kiran Chaurasia that, according to her, neither she nor the petitioner has remained in possession of the property since 2006, whereas the auction purchaser has been in possession thereof since the issuance of the sale certificate. She has also stated that the petitioner subsequently executed several sale deeds in favour of third parties in 2014 and 2015 in respect of portions of the property in question, without, according to the allegations made in the affidavit, disclosing the earlier mortgage and the pending litigation. These assertions lend support to the respondents' objection regarding the petitioner's subsequent dealings with the property; nevertheless, their precise legal effect would depend upon the relevant sale deeds, the extent of the property covered thereby and the rights, if any, subsisting in favour of the petitioner at the time of execution.

78) The Court further takes note of the fact that an FIR was registered against the petitioner and other persons on the complaint of the auction purchaser in relation to the subsequent transactions. However, the registration of an FIR, by itself, cannot be treated as proof of the allegations made therein or as a conclusive determination of title to the property. The criminal proceedings are required to be considered independently in accordance with law and cannot, merely by their pendency, determine the legality of the auction proceedings impugned in the present writ petition.

79) The principal issue, therefore, is whether the auction proceedings culminating in the issuance of the sale certificate dated 24.01.2008 were

conducted in accordance with the applicable provisions of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002, as they stood at the relevant time. The respondent Bank has relied upon the publication of sale notices dated 03.02.2007 and 22.03.2007, acceptance of the auction purchaser's bid of ₹33,00,000/-, confirmation of sale stated to have been made on 08.08.2007 and subsequent issuance of the sale certificate. At the same time, the petitioner has questioned the reduction in the reserve price, the absence of relevant contemporaneous records and the sequence concerning payment of the balance sale consideration and confirmation of sale. These issues require examination with reference to the original record and the statutory requirements applicable to the transaction.

80) The subsequent sale deeds relied upon by the respondents and the assertions regarding possession cannot, by themselves, dispense with the necessity of determining whether the original auction was legally valid. Equally, the petitioner's subsequent offer of ₹34,00,000/- dated 24.12.2007 cannot, merely because it exceeded the accepted bid by ₹1,00,000/-, establish a right to have the auction sale set aside. The petitioner's entitlement to redemption and the legal effect of the offer must be assessed in the light of the applicable version of Section 13(8) of the SARFAESI Act and the stage reached in the enforcement proceedings.

81) Accordingly, while the affidavits filed on behalf of the auction purchaser and Smt. Kiran Chaurasia raise substantial questions concerning the petitioner's subsequent dealings with the property and the rights claimed by the auction purchaser, the ultimate determination of the writ petition must rest upon the legality of the auction proceedings, the petitioner's legally enforceable rights and the material available on record. The mere existence of subsequent transfers, an FIR or a claim of possession cannot substitute for such determination. The challenge to the auction sale must, therefore, be adjudicated on its own merits, in accordance with law.

82) Relevant portion of the impugned order dated 18.07.2011 speaks as under:

> *"11. On the basis of the same it is clear that the respondent No. 1 has failed to prove that in the said land any agricultural operation is going on, and on the contrary it is proved by the appellant and the respondent No. 2 that the said land is not used for any agricultural operation.*
>
> *12. Apart from the aforesaid, this is also to be seen that there had been two owners of the plot in question and the auction was challenged by only one owner and another owner has not come forward to challenge the proceedings, yet, the Debts Recovery Tribunal has set aside the whole of the auction. In this reference, this is to be seen that even assuming that the said plot was an agricultural land, the whole auction proceedings could not have been set aside by the Debts Recovery Tribunal and the auction of the plot in question to the extent of only 50% share belonging to the respondent No. 1 should have been set aside by the Debts Recovery Tribunal because it was the case of the respondent No. 1 that on the aforesaid plot she is having only an equal ownership.*
>
> *13. In view of the aforesaid, I do find force in the present appeal and accordingly, I set aside the order passed by the Debts Recovery Tribunal on 17.08.2010 for the reasons stated above and accordingly, the appeal stands allowed.*
>
> *14. A copy of the judgment be supplied to the parties as well as the Debts Recovery Tribunal concerned as per law. Record, if summoned earlier, be also sent back to the Debts Recovery Tribunal concerned within a week."*

83) I have considered the submissions advanced by learned counsel for the petitioner, learned counsel appearing on behalf of the learned Additional CSC appearing for respondent No.1- State (DRAT), respondent No.2-Bank and learned counsel appearing on behalf of respondent No.3, the auction purchaser and have carefully examined the pleadings, affidavits and the relevant provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act"), as reproduced in the material placed before this Court. The controversy arises out of the order dated 18.07.2011 passed by the Debts Recovery Appellate Tribunal, Allahabad, whereby the appeal preferred by the respondent Bank was allowed and the order dated 17.08.2010 passed by the Debts Recovery Tribunal, Lucknow, in Securitisation Application

No. SA-137 of 2007 was set aside. The principal question for consideration is whether the petitioner has established any illegality, jurisdictional error or perversity in the impugned appellate order warranting interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

84) Before proceeding to examine the individual submissions, it is necessary to bear in mind the statutory scheme governing enforcement of security interests under the SARFAESI Act. Section 13(2) authorises a secured creditor, upon default and classification of the relevant account as a non-performing asset in accordance with the applicable norms, to issue a demand notice calling upon the borrower to discharge the liability within sixty days. In the event of failure to discharge the liability within the prescribed period, Section 13(4) enables the secured creditor to adopt one or more of the measures specified therein, including taking possession of the secured asset and transferring it by way of sale for realisation of the secured debt. These powers are, however, subject to the statutory limitations, the applicable rules governing enforcement and sale and the exclusions expressly provided under Section 31 of the Act. The statutory scheme, thus, seeks to facilitate enforcement of a valid security interest without dispensing with compliance with the mandatory requirements of law.

85) Section 17 of the SARFAESI Act provides an adjudicatory remedy to any person, including a borrower, aggrieved by a measure taken under Section 13(4). Under sub-sections (2) and (3) thereof, the Debts Recovery Tribunal is required to examine whether the measure adopted by the secured creditor conforms to the Act and the rules made thereunder and, where the measure is found unlawful, may declare it invalid and grant appropriate consequential relief, including restoration of possession where warranted. Section 18 provides an appellate remedy against an order passed by the Debts Recovery Tribunal under Section 17. The order under challenge has been passed by the Appellate Tribunal in exercise of the appellate jurisdiction conferred by the statute. Consequently, the mere fact that the Appellate Tribunal reversed the

decision of the Debts Recovery Tribunal does not, by itself, constitute a ground for interference. The petitioner must demonstrate that the reversal suffers from an error of law, a material failure to consider the relevant record, perversity, or some other recognised infirmity warranting judicial review.

86) The first and foremost submission advanced by learned counsel for the petitioner is that the secured asset constitutes agricultural land and is, therefore, excluded from the operation of the SARFAESI Act by virtue of Section 31(i). It is contended that the petitioner and Smt. Kiran Chaurasia jointly purchased the property through a registered sale deed dated 27.02.1987; that the land continued to be recorded as agricultural in the revenue records; and that the Debts Recovery Tribunal, after examining the relevant Khasra and Khatauni, rightly concluded that the Bank could not invoke the provisions of the Act in the absence of any order converting the land to non-agricultural use under Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act. The petitioner further submits that the Appellate Tribunal reversed the decision of the Debts Recovery Tribunal without recording a legally satisfactory finding on this foundational issue.

87) There can be no quarrel with the proposition that Section 31(i) excludes a security interest created in agricultural land from the operation of the SARFAESI Act. Where the statutory exclusion applies, the secured creditor cannot overcome it merely by relying upon the existence of a mortgage or the default committed by the borrower. Equally, however, the applicability of the exclusion must be determined on the basis of the nature of the property and the evidence relevant to its agricultural character. The question is not answered conclusively by the description of the property in a sale deed or by the existence of an entry in the revenue record, considered in isolation. The revenue entries are relevant and must receive due consideration, but their evidentiary significance has to be assessed in the light of the other material bearing upon the nature and actual use of the land.

88) In the present case, the petitioner relies upon a Khasra said to have been issued on 22.07.2011 and the earlier revenue entries, whereas the impugned appellate order, in the extract reproduced before this Court, records that the petitioner failed to establish that agricultural operations were being carried on over the land and that the material produced by the Bank and respondent no.3 indicated otherwise. The petitioner disputes the adequacy of this conclusion and contends that the absence of an order under Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act ought to have been given due significance. Nevertheless, the absence of such an order cannot, without examination of the applicable statutory framework and the complete evidence, be elevated into an invariably conclusive test of the applicability of Section 31(i). Conversely, the absence of agricultural operations at a particular point in time would not, by itself, necessarily establish that the property had ceased to be agricultural land for the purposes of the exclusion. The determination must rest upon the cumulative effect of the relevant material and the applicable law.

89) The fact that the Debts Recovery Tribunal adopted one view on the agricultural character of the property does not render that view immune from appellate scrutiny. The Appellate Tribunal was competent under Section 18 to examine the findings recorded by the Debts Recovery Tribunal and to reverse them if the findings were inconsistent with the material on record or the applicable law. The relevant extract of the impugned order indicates that the Appellate Tribunal considered the question of agricultural use and recorded its conclusion on the evidence before it. The petitioner has not, in the material reproduced in the present proceedings, demonstrated by reference to any identified finding or documentary evidence that the conclusion of the Appellate Tribunal is necessarily perverse or that it ignored an indisputable statutory fact. A disagreement with the appreciation of evidence by the appellate forum cannot, without more, furnish a sufficient ground for this Court to substitute its own assessment in proceedings under Article 226.

90) The petitioner has further relied upon the proposition that the revenue record and the absence of a declaration under Section 143 ought to have led to the conclusion that the land remained agricultural. The proposition, however, cannot be applied mechanically. The legal character of the property for the purpose of Section 31(i) must be examined in the context of the exclusion contained in the SARFAESI Act and the evidence of its nature and use. Neither a revenue entry nor the absence of a particular order can be treated as a substitute for the entire inquiry where the relevant facts are disputed. The Appellate Tribunal's conclusion must be read in the context of its finding regarding the absence of proof of agricultural operations and the material relied upon by the Bank and the auction purchaser. In the absence of a demonstrated legal error or perversity in that assessment, the petitioner's contention does not justify setting aside the appellate order.

91) The next submission of learned counsel for the petitioner is that the statutory notices contemplated under Sections 13(2) and 13(4) of the SARFAESI Act were not duly served upon her. It is asserted that although the demand notice under Section 13(2) was issued in her name, the possession notice dated 18.11.2006 was issued in the name of Shri Dhruv Prakash Chaurasia, one of the partners of M/s Chaurasia Traders, and that neither the petitioner nor the principal borrowers received the requisite notice. The petitioner has also relied upon her letter dated 09.07.2003, allegedly intimating the Bank of her change of residence from Lucknow to Faizabad and the subsequent letter dated 12.10.2007 seeking information concerning the loan and the recovery proceedings.

92) The requirements of Sections 13(2) and 13(4) operate at distinct stages of the enforcement process and cannot be treated as interchangeable. Compliance with the requirement of issuing a demand notice does not, by itself, establish compliance with every requirement governing the subsequent measure of taking possession or bringing the secured asset to sale. At the same time, an allegation of non-service must be examined with reference to the notice concerned, the person legally entitled to receive it, the address used, the mode of service and the

material available in the record. The mere assertion that a notice was not received cannot automatically invalidate the entire enforcement process; equally, the Bank cannot be absolved of a mandatory obligation merely because it claims to have initiated recovery proceedings.

93) In the present case, the petitioner has asserted that the Bank had been informed of her changed address, but the material reproduced before this Court does not disclose a complete examination of the original notices, the proof of dispatch or service, or the terms of the mortgage and other security documents. The fact that the possession notice was issued in the name of one of the borrowers raises a question requiring consideration of the precise nature of the security interest and the applicable service requirements. It does not, without examination of the relevant documents, conclusively establish either that the entire enforcement process was void or that the Bank complied with every statutory requirement. The petitioner was required to establish a legally material defect in the impugned enforcement measure. The material presently disclosed does not furnish a sufficient basis for holding that the Appellate Tribunal's order is liable to be quashed solely on the ground of the asserted non-service.

94) The petitioner's further submission regarding the classification of the loan account as a non-performing asset also requires consideration. She relies upon the statement of account dated 04.05.2007 and points out that transactions were reflected up to 31.05.2006, with a further entry dated 30.06.2006. On this basis, she contends that the Bank could not have lawfully classified the account as an NPA and initiated proceedings under Section 13(2) of the SARFAESI Act. The submission proceeds on the assumption that the mere existence of a transaction in the account necessarily precludes classification as a non-performing asset.

95) The aforesaid assumption cannot be accepted as a proposition of law. Classification of an account as a non-performing asset depends upon the nature of the credit facility, the contractual repayment obligations, the period for which the relevant amount remained overdue

and the prudential norms applicable to the account at the material time. A transaction appearing in a statement of account does not, by itself, establish that the borrower had regularised the account or that the conditions governing classification as an NPA were not fulfilled. Equally, the Bank's assertion of classification cannot be treated as conclusive if the relevant statutory or regulatory requirements are shown not to have been satisfied. In the present case, however, the material supplied does not set out the complete repayment schedule, the relevant overdue position, the applicable classification calculation or any specific finding of the Appellate Tribunal demonstrating a legally material defect in the classification. The mere reference to subsequent account entries is, therefore, insufficient to establish that the initiation of proceedings under Section 13(2) was unlawful.

96) Learned counsel for the petitioner has next placed considerable emphasis upon the tender of bank drafts aggregating to approximately ₹34,00,000/- on 22.12.2007, contending that the said amount exceeded the auction consideration of ₹33,00,000/- and was tendered before issuance of the sale certificate dated 24.01.2008. It is argued that the Bank's letter dated 07.01.2008 returning the drafts was contrary to Section 13(8) of the SARFAESI Act and that the Appellate Tribunal failed to distinguish between the date of auction, the date of confirmation of sale, the date of payment of the sale consideration and the date of issuance of the sale certificate.

97) The legal effect of the petitioner's tender must be determined by applying Section 13(8) in the form applicable to the enforcement proceedings at the relevant time. The provision reproduced in the supplied material contemplates that the amount of dues of the secured creditor, together with all costs, charges and expenses incurred by it, must be tendered before the date of publication of the notice for public auction or the corresponding notice for transfer of the secured asset. Where those statutory conditions are satisfied, the consequences prescribed by the provision follow. The provision does not, in the version reproduced before this Court, make the date of issuance of the

sale certificate the sole or decisive test for determining whether the secured creditor was obliged to discontinue the transfer process. The relevant statutory event is the tender within the period specified by the applicable provision and not merely the date upon which the formal certificate was subsequently issued.

98) The chronology disclosed by the respondents assumes significance in this context. The Bank states that the first sale notice was published on 03.02.2007 with a reserve price of ₹40,00,000/- and that, after the auction could not be finalised for want of bidders, a second sale notice was published on 22.03.2007 with a reserve price of ₹32,00,000/-. According to the Bank, respondent No.3's bid of ₹33,00,000/- was accepted and the sale was confirmed on 08.08.2007, whereas the sale certificate was issued on 24.01.2008. The petitioner's offer was made subsequently, in December 2007. If the statutory notice for public auction had already been published before the tender, the condition prescribed in the version of Section 13(8) reproduced before this Court would not be satisfied merely because the sale certificate was issued later. The petitioner has not established that the tender was made before the relevant publication of the sale notice.

99) There is, moreover, a material distinction between the amount of the auction consideration and the amount of the secured creditor's outstanding dues. The petitioner's drafts were stated to aggregate approximately ₹34,00,000/-, whereas the Bank asserts that the liability outstanding as on 24.12.2007 was ₹40,22,861.08, apart from expenses incurred in the recovery proceedings. The fact that the tendered amount exceeded the auction bid by ₹1,00,000/- does not establish that the amount represented the entire dues of the secured creditor together with all costs, charges and expenses. The petitioner's contention that the Bank was bound to accept the drafts cannot be sustained merely by comparing the two figures. In the absence of material establishing that the tender satisfied the requirements of the applicable version of Section 13(8), the return of the drafts does not furnish a sufficient ground for invalidating the sale.

100) The petitioner has rightly emphasised that the date of auction, the date of acceptance of the bid, the date of confirmation of sale, the payment of the balance consideration and the issuance of the sale certificate are legally distinct events. Their respective consequences must be determined in accordance with the applicable statutory provision and the Security Interest (Enforcement) Rules, 2002. Nevertheless, the distinction drawn by the petitioner does not advance her case unless the relevant dates, read with the governing provision, establish that the secured creditor was legally prohibited from proceeding with the sale. On the chronology pleaded by the Bank, the sale notice preceded the petitioner's offer by several months, the bid was accepted and the sale was stated to have been confirmed on 08.08.2007 and the certificate was issued on 24.01.2008. The later issuance of the certificate, standing alone, does not revive a right of redemption which had not been exercised in the manner and within the period prescribed by the applicable statutory provision.

101) The petitioner's submission that the Bank was required to accept the drafts because they exceeded the auction price is, therefore, misconceived. A secured creditor's statutory rights and the corresponding right of redemption are governed by the statute and cannot be determined solely by comparing competing monetary offers. Nor does a subsequent willingness to pay necessarily confer a right to reopen an auction already undertaken in accordance with law. The petitioner has not demonstrated that the Bank was statutorily obliged to abandon the accepted bid on account of the tender made in December 2007. Consequently, no illegality in the impugned appellate order is established on this ground.

102) The petitioner has also contended that the Bank could not lawfully proceed against her property because the loan had been availed of by M/s Chaurasia Traders and she was merely a person who had furnished the property as security, rather than the principal borrower. It is further submitted that the Bank ought first to have proceeded against the principal borrowers or their assets before enforcing the mortgage over

the petitioner's property. The contention, insofar as it suggests that the secured creditor was invariably required to exhaust its remedies against the principal borrowers before enforcing a valid security interest, cannot be accepted.

103) The distinction between the principal borrower and the person who has created a mortgage or furnished security is relevant, but it does not by itself extinguish the secured creditor's rights over the secured asset. Where a valid and enforceable security interest has been created to secure the loan, the secured creditor may ordinarily proceed against the secured asset in accordance with the governing law, subject to the terms of the security instrument and the statutory restrictions applicable to the transaction. The petitioner herself asserts that her property was mortgaged with the Bank in the year 2003 to secure the credit facility extended to M/s Chaurasia Traders. Her status as a person who was not the principal borrower does not, without more, render the mortgage unenforceable. The decisive questions remain whether the security interest was validly created, whether the property fell within a statutory exclusion and whether the Bank complied with the applicable enforcement procedure. The petitioner has not established that the Bank was legally bound to exhaust its remedies against the principal borrowers before taking recourse to the mortgaged property.

104) Learned counsel for the petitioner has further challenged the valuation and fairness of the auction, contending that the property was worth approximately ₹1.5 crore but was sold for ₹33,00,000/-. It is submitted that the reduction in the reserve price from ₹40,00,000/- to ₹32,00,000/- and the alleged failure to assess the market value properly indicate that the auction was conducted arbitrarily. The respondent Bank, on the other hand, submits that the first auction did not attract bidders and that the reserve price was reduced for the subsequent sale, in which respondent no.3 offered ₹33,00,000/-.

105) The sale of a secured asset must conform to the applicable provisions of the Security Interest (Enforcement) Rules, 2002, including

the requirements governing valuation, fixation of reserve price, notice and publication of sale and conduct of the auction. The fact that the Bank has a statutory right to enforce the security does not authorise it to disregard mandatory safeguards intended to ensure a lawful and fair sale. Equally, an allegation that the market value of the property was substantially higher than the auction consideration cannot, without supporting valuation material and proof of a legally material irregularity, automatically invalidate the sale. The relevant inquiry is whether the applicable procedure was followed and whether any established breach was material to the legality of the sale.

106) In the present case, the Bank has furnished the particulars of two sale notices and explained that the first auction could not be finalised for want of bidders. It has further stated that the second sale notice fixed a reserve price of ₹32,00,000/- and that the bid of ₹33,00,000/- submitted by respondent No.3 was accepted. The petitioner's assertion of a market value of approximately ₹1.5 crore is not, by itself, sufficient to establish that the reserve price was unlawfully fixed or that the auction was vitiated by fraud, collusion or a breach of a mandatory rule. The material supplied does not disclose a contemporaneous valuation report or other reliable evidence establishing the alleged value or identifying a specific mandatory requirement which was violated. In these circumstances, the challenge founded solely upon the alleged inadequacy of the sale consideration cannot be accepted.

107) The petitioner has also contended that the Appellate Tribunal ought not to have reversed the order of the Debts Recovery Tribunal without recording adequate reasons on each material issue. The requirement to give reasons is an essential feature of fair adjudication, particularly where the decision determines the legality of measures taken against immovable property. An appellate authority must consider the grounds urged before it and disclose the reasoning supporting its conclusions on the issues material to the result. However, the adequacy of reasons must be assessed from the order read as a whole and not by

isolating a particular sentence or by assuming that every contention not reproduced in detail has necessarily been ignored.

108) The relevant portion of the impugned order reproduced in the present material indicates that the Appellate Tribunal considered the question of agricultural use and the petitioner's claim of joint ownership. It recorded its conclusion that agricultural operations had not been proved and further observed that, even if the property were agricultural, the Debts Recovery Tribunal ought not to have set aside the entire auction when the petitioner claimed only a 50 per cent share and the other co-owner had not challenged the proceedings. These findings disclose the principal grounds upon which the Appellate Tribunal reversed the decision of the Debts Recovery Tribunal. The petitioner has not demonstrated by reference to its actual reasoning, that the decision is devoid of reasons altogether or that the findings recorded therein are unsupported by any material. The submission that the impugned order is non-speaking or wholly unreasoned cannot, therefore, be accepted merely on the basis of the extract reproduced in the writ petition.

109) It is true that the Appellate Tribunal's observation concerning the petitioner's 50 per cent share cannot, by itself, determine the extent of the security interest or conclusively resolve the rights of all co-owners. Those matters ordinarily depend upon the title documents, the mortgage instrument and the nature of the security actually created. However, the petitioner has also to establish that the impugned order suffers from an error warranting interference and that the entire auction was liable to be set aside on a legally sustainable ground. The fact that the petitioner and Smt. Kiran Chaurasia jointly purchased the property does not, without examination of the mortgage documents, establish that the security interest was confined to the petitioner's share or that the auction was necessarily invalid in its entirety. Conversely, the absence of a challenge by the other co-owner cannot cure an otherwise established statutory violation. The Appellate Tribunal's observation regarding the extent of ownership must be understood in the context of the dispute before it; it

does not, on the material supplied, furnish an independent ground for quashing the appellate order.

110) The petitioner has further contended that the Bank could not proceed with the auction without first resolving the question of the agricultural character of the land and that the rights of the auction purchaser cannot prevail over an enforcement measure which is otherwise unlawful. The legal principle that a completed auction cannot cure an antecedent violation of a mandatory statutory requirement is not in dispute. Equally, however, the mere assertion of an antecedent illegality does not establish that such illegality occurred. The petitioner must demonstrate that the property attracted the statutory exclusion, that a mandatory notice or procedural requirement was violated, or that the sale was otherwise vitiated under the applicable law. In the absence of such proof, the rights acquired by the auction purchaser pursuant to the sale cannot be displaced merely because the petitioner disputes the Bank's assessment of the property or expresses a subsequent willingness to pay the outstanding dues.

111) The submissions of learned counsel for respondent No.3 concerning the subsequent sale deeds executed by the petitioner in the years 2014 and 2015, the claim of possession and the construction stated to have been raised over a portion of the property have also been considered. These events occurred after the sale certificate dated 24.01.2008 and cannot, by themselves, establish the legality of the original auction. Equally, the subsequent registration of sale deeds by the petitioner cannot, by itself, establish that she retained a title capable of being transferred free from the consequences of the earlier mortgage and auction. The legal effect of those transactions must be determined in accordance with the title documents and the rights subsisting at the time of their execution. The subsequent transactions are, therefore, not treated as conclusive of the validity of the auction, but neither do they furnish a ground for granting the relief sought in the present writ petition.

112) The registration of an FIR on the complaint of respondent No.3 has also been brought to the notice of the Court. The existence of criminal proceedings does not establish the guilt of the petitioner, nor can the allegations contained therein be treated as a conclusive determination of the civil rights in the property. The criminal proceedings must be adjudicated independently in accordance with law. The present writ petition is concerned with the legality of the appellate order passed under the SARFAESI Act and the question whether the auction proceedings were lawfully conducted must be determined on the relevant statutory provisions and admissible material, without prejudging the criminal allegations. Accordingly, no adverse finding regarding the petitioner's guilt is warranted or recorded on the basis of the FIR.

113) Learned counsel for the petitioner has also submitted that the statutory remedy under Section 17 of the SARFAESI Act is intended to provide a complete adjudicatory mechanism and that the High Court's jurisdiction under Article 226 is not excluded merely because the dispute arises under the said Act. The proposition that the existence of an alternative remedy does not, in every circumstance, extinguish the constitutional jurisdiction of this Court is well settled. Nevertheless, the existence of an efficacious statutory remedy is a material consideration in determining whether discretionary writ jurisdiction ought to be exercised. In the present case, the petitioner invoked Section 17 and obtained an order from the Debts Recovery Tribunal; the Bank thereafter pursued the statutory appellate remedy under Section 18 and the Appellate Tribunal passed the order now under challenge. The writ petition is, therefore, not a substitute for another round of appellate adjudication on disputed questions of fact.

114) Judicial review under Article 226 is directed towards examining the legality of the decision-making process and the existence of a recognised ground for interference; it does not ordinarily authorise this Court to reassess every item of evidence as though exercising a further statutory appeal. Where a specialised tribunal has considered the dispute within its jurisdiction, its findings cannot be displaced merely because

another view of the evidence may be possible. Interference would be justified where the decision is shown to be without jurisdiction, contrary to a mandatory statutory provision, vitiated by denial of natural justice, based on a material misreading of the record, or otherwise perverse in the legal sense. The petitioner has not established such an infirmity on the material reproduced before this Court. The allegation that certain issues were not adequately addressed does not, in the absence of a demonstrated material error in the actual order, warrant the exercise of extraordinary jurisdiction.

115) The submission that the Bank's statutory powers must be exercised in strict conformity with the SARFAESI Act is accepted as a correct statement of law. Sections 13(2) and 13(4) cannot be applied without regard to their respective conditions; Section 31(i) must be given effect wherever its requirements are satisfied; and Section 13(8) must be applied in the form governing the transaction at the material time. The Security Interest (Enforcement) Rules, 2002 likewise impose obligations upon the secured creditor in conducting a sale. Nevertheless, the existence of these statutory safeguards does not, by itself, establish that the Bank violated them in the present case. The petitioner's challenge must succeed on proof of a legally material violation, not merely on a recitation of the statutory provisions or the assertion that the Appellate Tribunal ought to have reached a different conclusion.

116) Upon an overall consideration of the material disclosed, the petitioner has not established that the impugned appellate order dated 18.07.2011 is liable to be quashed on account of the asserted agricultural character of the land, the alleged non-service of statutory notices, the challenge to the classification of the loan account as an NPA, the tender of bank drafts in December 2007, the alleged inadequacy of the auction consideration, or the petitioner's status as a person who furnished security for a loan taken by another borrower. The Bank has placed on record its version concerning publication of the sale notices, acceptance of the bid of respondent No.3, confirmation of sale and issuance of the sale certificate. The petitioner's subsequent offer, made after publication

of the sale notices and after the sale was stated to have been confirmed, does not establish compliance with the requirements of the applicable version of Section 13(8). Nor has the petitioner established, on the material supplied, a specific violation of the statutory sale procedure or a jurisdictional defect which would render the appellate order unsustainable.

117) It is also relevant that the auction purchaser was issued a sale certificate on 24.01.2008, whereas the present writ petition was instituted on 27.07.2011. The passage of time and the intervening rights asserted by respondent No.3 are relevant circumstances in considering the discretionary relief sought, although delay alone is not treated as curing an established violation of a mandatory statutory provision. The petitioner must, in the first instance, demonstrate a legally sustainable ground for setting aside the appellate order and the consequential sale. In the absence of such a showing, the Court would not be justified in disturbing the rights claimed by the auction purchaser merely on the basis of the petitioner's subsequent offer to pay an amount which, according to the Bank, was lower than the outstanding dues and expenses.

118) The relief sought in prayer clauses (i) and (ii) is for quashing the appellate order dated 18.07.2011 and restraining the respondents from giving effect thereto. For the reasons recorded above, no sufficient ground has been established for granting either relief. Prayer clause (iii), seeking a direction to the Bank to accept the loan amount and hand over the property along with the relevant documents, is consequential upon the petitioner's challenge to the auction proceedings. Once the petitioner has failed to establish a legally enforceable right to have the sale set aside or to compel acceptance of the tender made in December 2007, no direction for restoration of the property or delivery of documents can be issued in the present proceedings. The Court cannot direct the Bank to accept an amount merely because it exceeds the auction consideration, without proof that the statutory requirements governing redemption were satisfied.

119) For the reasons aforesaid, this Court finds no sufficient ground, on the material placed before it, to interfere with the impugned order dated 18.07.2011 passed by the Debts Recovery Appellate Tribunal, Allahabad, in exercise of the jurisdiction conferred by Article 226 of the Constitution of India. The petitioner has failed to establish that the impugned order suffers from a jurisdictional error, perversity or a demonstrated violation of a mandatory statutory provision warranting its quashing. The submissions advanced on behalf of the petitioner, though carefully considered, do not merit acceptance.

120) Accordingly, the writ petition is liable to be dismissed and is hereby **dismissed**. The order dated 18.07.2011 passed by the Debts Recovery Appellate Tribunal, Allahabad, setting aside the order dated 17.08.2010 passed by the Debts Recovery Tribunal, Lucknow, in Securitisation Application No. SA-137 of 2007, is affirmed.

121) No opinion expressed herein shall be construed as a determination of the guilt of the petitioner in the criminal proceedings referred to by the parties, which shall proceed independently in accordance with law.

122) There shall be no order as to costs.

(Irshad Ali,J.)

November 05, 2026
Adarsh K Singh

Digitally signed by :-
ADARSH KUMAR SINGH
High Court of Judicature at Allahabad,
Lucknow Bench