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

% **Judgment reserved on : 08 October 2024**
Judgment pronounced on : 03 December 2024

\+ W.P. (C) 13770/2021 & CM APPL. 46539/2024

PAWAN KUMAR TANEJA ..... Petitioner
Through: Mr. Nazim Uddin Ahmed, Mr. Utkarsh Bhatt, Mr. Anil Kumar Yadav, Mr. Aditya Shankar & Mr. Dipak, Advocates.

versus

KARUR VYASA BANK LTD. & ANR ..... Respondents
Through: Mr. Ramesh Babu & Ms. Tanya Chowdhary, Advocates for RBI.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner is invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking the following reliefs:

> "a. Pass appropriate directions for the quashing of Sale Certificate dated 24.12.2013, issued and signed by the Authorized Officer of Respondent No. 1 to the Petitioner;
> b. Issue a writ of Mandamus or any other appropriate writ directing the Respondent no. 1 Bank to refund the sum of Rs. 9,93,752.94 along with interest at the rate of 12% per annum from 2013 till actual payment to the Petitioner;
> c. Pass appropriate directions to Respondent No.1 for foreclosing the loan account bearing number 4103753000000457 of the Petitioner;
> d. Pass appropriate directions to Respondent No. 1 to remove the freeze marked by Respondent No. 1 on the savings account

number 4103172000004607 which the Petitioner maintains with the said bank;

e. Pass appropriate directions in the nature of writ to Respondent no. 2, thereby directing Respondent no. 2/ Reserve Bank of India for taking appropriate action against the arbitrary and unconscionable actions of Respondent no.1; and/or

f. Pass such other/further orders in favor of the Petitioner as this Hon'ble Court deems fit and proper in view of the aforesaid facts and circumstances."

BRIEF FACTS

2. Shorn of unnecessary details, the respondent No. 1 had published an Auction Sale Notice on 30.10.2013 for conducting an E-auction on 10.12.2013, wherein the petitioner was the auction purchaser regarding the property bearing No. 53, Second Floor, Pocket-9, Sector 21, Rohini, Delhi – 110085[1]. It is averred that as per the Auction Sale Notice, the reserve price for the property in question was Rs. 28,42,000/- and to participate in the auction sale, the interested persons had to make an EMD[2] of Rs. 3,00,000 on or before 10.12.2013 by 11:30 am, by way of Demand Draft or RTGS in the account of respondent No. 1.

3. The petitioner with regard to the Auction Sale Notice deposited the amount of EMD with the respondent No. 1 *via* RTGS bearing reference No. CITIH133435000941, and participated in the e-auction sale which was conducted on 10.12.2013 and had complied with all the necessary requirements and was declared as the successful bidder. The sale certificate for the same was issued on 24.12.2013 by the respondent No. 1.

[1] Subject property
[2] Earnest Money Deposit

4. It is the case of the petitioner that he deposited Rs. 9,60,000/- including the EMD with respondent No. 1 and for the remaining amount, the petitioner took a loan of Rs. 20,00,000/- from the respondent No. 1 itself on 24.12.2013. The tenure of the said loan was of 15 years with an EMI[3] of Rs. 22,721.94/-. The petitioner paid a loan processing fee of Rs. 8,427/- *via* cheque No. 317847 dated 24.12.2013, drawn on Citibank N.A., to respondent No. 1. Additionally, Rs. 25,325.94/- was paid as GMRA[4] insurance charges. In total, the petitioner paid Rs. 9,93,752.94/- to respondent No. 1 for the purchase of the property in question, with the remaining amount to be disbursed through a loan sanctioned by the respondent No. 1.

5. The petitioner asserts that upon reaching the subject property, he discovered that Ms. Ranju Kumari, residing at 110, Moon Light Apartment, Rohini, New Delhi, was in possession of the subject property, claiming ownership through a purchase from Oriental Bank of Commerce on 06.06.2013. This shocked the petitioner, who had lawfully purchased the property in an auction by respondent No. 1 and taken a loan against it. It is further contended that if Ms. Kumari's claims were valid, it indicated respondent No. 1 auctioned the property without due diligence, leaving the petitioner, who acted in good faith, in a serious predicament.

6. The petitioner intimated the respondent No. 1 of the abovementioned situation through a letter dated 13.01.2014. In the letter, the petitioner informed that Ms. Kumari was in possession of

[3] Equally Monthly Installment
[4] Group Mortgage Redemption Assurance

the property in question, as reflected in the orders of the learned Debts Recovery Tribunal ["**DRT**"]. The petitioner also requested a refund of the EMD paid by him, along with the loan charges imposed by respondent No. 1.

7. The petitioner further asserts that instead of his request, the respondent No. 1 continued to charge EMIs and impose interest, despite the fact that it was the fault of respondent No. 1 for auctioning a property that had already been sold, which resulted in the petitioner not receiving a clear title. Under these circumstances, it was unreasonable for respondent No. 1 to demand EMIs, leaving the petitioner with no option but to cease payment of the EMIs.

8. According to the petitioner, respondent No. 1 filed a Securitization Application ["**S.A.**"] in April 2014, titled as "**Karur Vysya Bank v. Oriental Bank of Commerce & Anr.**[5]", dated 11.04.2014, before the learned DRT-III, New Delhi. In the said S.A., respondent No. 1 asserted that it held valid security interest/mortgage in respect of the property in question, while Oriental Bank of Commerce had already taken action, and Syndicate Bank and Bank of India were also taking measures under the SARFAESI[6] Act, concerning the same property. The respondent No. 1 sought a declaration that the sale of the property to the petitioner was valid and legal and a declaration that the actions of the other banks involved, namely Oriental Bank of Commerce, Syndicate Bank, and Bank of India, were illegal with respect to the property.

[5] Diary No. 182/2014

9. Although the stated cause of action for the SA was based on information received from the petitioner, and as the auction purchaser, the petitioner was a necessary party, respondent No. 1 failed to include the petitioner in the proceedings before the learned DRT. The petitioner, therefore, sought to raise his grievances independently before the learned DRT regarding the refund of his money and was advised to seek impleadment in the proceedings. Consequently, the petitioner filed an application for his impleadment.

10. The petitioner, in his communication dated 15.04.2014, reiterated his grievances to respondent No. 1, expressing dissatisfaction over being sold an encumbered property with claims from other banks. He further informed that the loan amount for the sale consideration remained undisbursed and with the bank. Due to the encumbrance, respondent No. 1 could not execute a registered sale deed or deliver vacant possession. The petitioner requested that no interest be charged on the sanctioned loan.

11. On receiving no response to the communication dated 15.04.2014, the petitioner sent an e-mail to the MD[7] & CEO[8] of respondent No. 1 on 16.07.2014, detailing his predicament caused by the sale of an encumbered property. The petitioner again requested a refund of the amounts paid, along with interest. The petitioner was also informed that the S.A. filed by respondent No. 1 before the learned DRT-III had been dismissed by the Tribunal. The petitioner

[6] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
[7] Managing Director
[8] Chief Executing Officer

received a reply to the aforementioned e-mail on 26.07.2014, wherein respondent No. 1 neither disputed nor denied that the property sold to the petitioner was encumbered. Respondent No. 1 refused to refund the amounts paid by the petitioner, citing ongoing proceedings under the SARFAESI Act before the learned DRT, claiming the matter was *sub-judice* and listed for 10.11.2014.

12. By a communication dated 26.07.2014, the petitioner submitted a representation to the Banking Ombudsman of respondent No. 2[9], highlighting the alleged malpractices of respondent No. 1 and seeking appropriate intervention. However, no action was taken by respondent No. 2. Subsequently, the petitioner addressed another communication dated 12.11.2014 to respondent No. 1, requesting an expeditious response to his earlier request, but no reply was received.

13. The S.A. filed on behalf of the respondent No. 1 which was dismissed for non-prosecution on 16.07.2014 was restored by the learned DRT as S.A. No. 194/2014 and was taken up on 10.11.2014. For the sake of convenience, the gist of proceedings which took place in the S.A. No. 194/2014 is reproduced below: -

Date	Proceedings
10.11.2014	Respondent No. 1 directed to supply copy of SA No. 194/2014 to all parties. Matter got adjourned to 23.01.2015
23.01.2015	Respondent no. 1 again sought time to supply copies. Matter got adjourned to 27.03.2015.
27.03.2015	Respondent no. 1 directed to ensure that copies are supplied to all parties. Syndicate Bank sought more time to file reply. Matter got adjourned to 29.06.2015.
29.06.2015	Syndicate Bank sought more time to file

[9] Reserve Bank of India

	reply. No appearance by Oriental Bank of Commerce (Respondent no. 1 therein). Respondent no.1 herein was directed to file rejoinder thereto and evidence before next date. Matter got adjourned to 13.08.2015.
13.08.2015	Respondent no. 1 again sought time to file rejoinder. Matter got adjourned to 14.10.2015.
14.10.2015	Respondent no. 1 again sought time to file rejoinder. The matter got adjourned to 30.11.2015.
30.11.2015	Respondent no. 1 sought more time to file rejoinder which was declined. Matter got adjourned to 21.01.2016.
21.01.2016	Matter got simply adjourned to 27.04.2016.
27.04.2016	The petitioner filed an impleadment application [I.A. 772/16] was issued. Matter got adjourned to 05.07.2016
05.07.2016 and 14.09.2016	The matter was adjourned to 25.11.2016.
25.11.2016	Last opportunity to the respondent No. 1 herein for filing a reply to the petitioner's impleadment application, failing which right to file reply would stand forfeited.
11.01.2017, 07.04.2017, 02.06.2017, 26.07.2017, 05.10.2017, 26.12.2017.	Matter was adjourned to 26.04.2018.
26.04.2018	No reply to S.A. 194/14 filed by Oriental Bank of Commerce. Reply to SA No. 194/14 already filed by Syndicate Bank. Respondent no. 1 herein did not file rejoinder. Matter was adjourned to 23.07.2018.
23.07.2018	No reply filed to the petitioner's impleadment application. Again adjournment sought by Respondent no. 1. Last opportunity granted. Matter adjourned to 18.09.2018 for final arguments
18.09.2018	All parties directed to produce original documents. Matter adjourned to 17.01.2019

	for final arguments.
14.06.2019	Respondent no. 1 bank sought adjournment for final arguments. Matter adjourned to 07.11.2019.
22.05.2020	Matter adjourned to 20.11.2020 due to Covid-19.
02.06.2021	Matter re-notified to 15.11.2021 for arguments as Hon'ble Presiding Officer on leave.

14. The petitioner asserts that the indifferent and lackadaisical conduct of respondent No. 1 in prosecuting its own case before the learned DRT, wherein the petitioner's interests became unnecessarily entangled, is evident. The petitioner further asserts that instead of refunding the money, respondent No. 1 continued levying charges and issuing demands for repayment of the loan, including a demand dated 31.08.2021 for Rs. 35,16,634.79/- as the alleged overdue amount.

15. The petitioner further avers that merely including a disclaimer stating that the property in question is being sold "as is, where is & what is where is" cannot absolve respondent No. 1 from its responsibility for the defective title. The auction notice did not disclose any encumbrance or title issues with the property. Under Rule 8(6)(f) of the Security Interest (Enforcement) Rules, 2002, the Authorized Officer is required to include any material information in the sale notice that could affect the purchaser's judgment of the property's nature and value. The fact that the property in question was occupied by a third party due to a prior auction was crucial for the petitioner's decision-making. Had the respondent No. 1 disclosed this

critical information, the petitioner would not have participated in the auction or made any payments.

16. The petitioner further avers that even in cases where an asset is sold under the SARFAESI Act, 2002, on an "as is where is" or "as is what is" basis, the seller remains obligated to disclose any material defects in the property or defects in the seller's title. The law requires the authorized officer of the bank to disclose any such defects to the auction purchaser, and failure to do so will be considered as misleading the purchaser. Furthermore, the sale certificate issued by the secured creditor must also reveal any encumbrances known to exist on the property. Disclaimers such as "as is where is" and "as is what is" do not absolve the seller (secured creditor) from responsibility; the secured creditor must conduct proper due diligence and a thorough search of the property before offering it for sale. In this case, respondent No. 1 failed to take the necessary steps to ascertain and disclose information regarding encumbrances and defects related to the property, which was not provided to the petitioner.

17. It is pertinent to mention here that despite putting up of appearance by the respondent No.1 on issuance of notice, although sufficient opportunities have been afforded to the respondent No.1, no reply or counter-affidavit has been filed. Respondent No.1 was granted last opportunity to file reply within three weeks from 22.07.2022, which too was not complied with. Even respondent No.2 has not cared to appear and respond to the notice issued.

ANALYSIS AND DECISION

18. I have bestowed my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar and I have meticulously perused the record.

19. Evidently, the petitioner purchased the subject property in an auction consequent to the scheduled property being acquired under the SARFAESI Act by respondent No.1. A sale certification dated 24.12.2013 was executed in his favour which *inter alia* contained a stipulation that *the sale of the scheduled property was free from all encumbrances known to the secured creditor* and that the delivery and possession of the scheduled property has been handed over to the petitioner, which obviously was symbolic possession only.

20. The said sale certificate dated 24.12.2013, which is Annexure P-3, also reflects that under the heading 'list of encumbrances' it is written as 'Nil'. Incidentally, it may be stated that in the Auction Sale Notice dated 30.10.2013, (Annexure P-2) the very publication notifies that the Tender-cum-Auction notice is pursuant to the possession of the scheduled property taken over by the bank under the SARFAESI Act for recovery of its secured debts amounting to Rs. 24,93,614.82 Paisa due in account of M/s. Dass Brothers and M/s. Simran Traders + interest thereupon, expenses, costs etc. and was being offered on 'as is where is' & 'what is where is' basis.

21. It is also manifest that based on the aforesaid declaration in the Tender-cum-Auction notice dated 30.10.2013, the petitioner purchased the property in question in the subsequent auction and deposited the requisite amount Rs. 9,93,752.94 Paisa from his own

sources and further took a home loan of Rs. 20 Lacs from the respondent No.1 in terms of the home loan agreement dated 24.12.2013. It is also a matter of record that when the petitioner went to occupy the subject property, one Ms. Ranju Kumari was found in possession of the subject property, who claimed herself to having purchased the property on 06.06.2013 through auction conducted by the learned DRT from Oriental Bank of Commerce.

22. It is also a matter of record that the petitioner immediately informed the respondent No.1 about such shocking revelation about the status of the property *vide* letter dated 13.01.20104. The trail of emails exchanged between the petitioner and the respondent No. 1 (Annexure P-12) would show that Mr. A. Vishwanadham, Manager (Law), Delhi for respondent no. 1 *vide* email dated 28.01.2014 apprised the petitioner that the matter has been taken up with the Central Officer. The petitioner being not satisfied sent another email letter on 24.07.2014 upon which he received a reply from the same officer of respondent No.1 on 26.01.2014 requesting the petitioner to bear with them as the decision by the Central Office was awaited and on the petitioner sending email dated 27.01.2014, a reply was received from the same officer of respondent No.1 on 28.01.2014 assuring the concerns raised by the petitioner were likely to be resolved on intervention by the Central Office of their bank. It appears that thereafter there was a complete silence on the part of the respondent No.1 despite sending email letters by the petitioner dated 05.02.2014, 10.02.2014,15.04.2014, 16.07.2014, 20.07.2014, 26.07.2014, 14.10.2014, 12.11.2014, 20.07.2015, 14.10.2015, 20.06.2021.

23. It is pertinent to indicate that the petitioner, in the aforesaid applications, consistently requested respondent No. l to stop the operation of the home loan account since the property in question had not been delivered to him due to the fault of the officers of respondent No. 1. Simultaneously, he sought a refund of the amount he had paid towards the auction purchase of the property in question, but his requests were in vain. It appears that, acting on the advice of the bank and perhaps his counsel, the petitioner subsequently filed an impleadment application before the learned DRT in SA No. 194/2014, which had been preferred at the behest of respondent No.1 against Oriental Bank of Commerce on 27.05.2016. The proceedings before the learned DRT are already reflected in the Tabular details given *vide* paragraph (13) hereinabove.

24. The long and short of the story is that, even after 11 years since the purchase of the scheduled property in auction, the petitioner remains entangled in prolonged litigation with respondent No.1, who has neither managed to hand over possession of the property in question to him nor adequately addressed his grievances.

25. That brings us to the issue as to whether in view of the pendency of the proceedings before the learned DRT, this writ petition is maintainable or not? This Court has no hesitation in answering that the present writ petition is certainly maintainable because the dispute as between the petitioner and the respondent No.1 cannot be encompassed within the scope and ambit of the SARFAESI Act.

26. **First things first,** the petitioner can be classified as a "borrower" under Section 2(f)[10] of the SARFAESI Act. The proceedings before the learned DRT under the Recovery of Debts and Bankruptcy Act, 1993, do not pertain to a home loan taken by the petitioner or any financial transaction involving a property mortgaged or pledged by him with the bank initially. The home loan agreement between the petitioner and the respondent No.1, arising from the agreement dated 24.12.2013, came into effect after the sale of the scheduled property though an auction under the SARFAESI Act. The schedule property was declared a secured asset[11] by respondent No.1 in the notification inviting tender and auction.

27. In other words, respondent No.1 claimed the schedule property as a 'security interest' for the realization of its debts from the primary borrowers viz., due in account of M/s. Dass Brothers and M/s. Simran Traders, whose accounts had become non-performing assets. Consequently, respondent No. 1 proposed to sell the property by inviting tenders and conducting an auction. The home loan agreement executed by the petitioner on 24.12.2013 is not the subject matter of the proceedings before the learned DRT. Instead, the proceedings concern the competing rights and claims of two different financial

[10] (f) "borrower" means 1 [any person who, or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) which,] has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution 2 [and includes a person who, or a pooled investment vehicle which,] becomes borrower of a 3 [asset reconstruction company] consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance 4 [or who has raised funds through issue of debt securities];

[11] 2(zc) "secured asset" means the property on which security interest is created

institutions/banks over the scheduled property, with each asserting it as its 'security interest.'

28. Evidently, the proceedings against the present petitioner are not in the nature of Section 13 of the SARFAESI Act, i.e., they do not pertain to the enforcement of a security interest *per se*, and therefore, this Court finds no hesitation in holding that pendency of proceedings before the learned DRT does not render the present petition non maintainable before this Court. In this regard, what needs to be appreciated is that there has been no compliance by the respondent No.1 with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002, which read as under:

> **"8. Sale of immovable secured assets.**
> (1) Where the secured asset is an immovable property, the authorized officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.
> (2) The possession notice as referred to in sub-rule (1) shall also be published in two leading newspaper, one in vernacular language having sufficient circulation in that locality, by the authorized officer.
> (2A) [All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of rule 8.] *[Inserted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]*
> (3) In the event of possession of immovable property is actually taken by the authorized officer, such property shall be kept in his own custody or in the custody of any person authorized or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.
> (4) The authorized officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.
> (5) Before effecting sale of the immovable property referred to in

sub-rule (1) of rule 9, the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) [by holding public auction including through e-auction mode; or] *[Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]*

(d) by private treaty.

(6) the authorized officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

[Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.] *[Substituted by Notification No. G.S.R. 1040(E), dated 17.10.2018 (w.e.f. 20.9.2002).]*

(7) [every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the web- site of the secured creditor, which shall include;

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price of the immovable secured assets below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) deposit of earnest money as may be stipulated by the secured creditor;

(f) any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property.]

(8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled [between the secured creditors and the proposed purchaser in writing] *[Substituted 'between the parties in writing' by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]*.

9. Time of sale, issue of sale certificate and delivery of possession, etc.

- [(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:
Provided further that if sale of immovable property by any one of the methods specified by sub rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.] *[Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]*
(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorized officer and shall be subject to confirmation by the secured creditor:Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of [rule 8] *[Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]*:Provided further that if the authorized officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.
(3) [On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again;] *[Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]*
(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period [as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months] *[Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]*.
(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited [to the secured creditor] *[Inserted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).]* and the property shall be resold and

the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.
(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorized officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.
(7) Where the immovable property sold is subject to any encumbrances, the authorized officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.
(8) On such deposit of money for discharge of the encumbrances, the authorized officer may issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.
(9) The authorized officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.
(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.

29. In particular, in terms of Rule 8(7)(f) it is manifest that the respondent No.1 failed to supply all the relevant details regarding the encumbrances in respect of the schedule property by or in favour of other financial institutions. There was a patent failure on the part of respondent no. 1 to conduct due diligence before auctioning the scheduled property. Regardless of whether respondent No. 1 was aware of the encumbrances on the property in question, this is immaterial, as the petitioner acted in good faith based on the declarations made by respondent No. 1. As a result, respondent No. 1

has not only unjustly enriched itself but has also caused irreparable harm to the petitioner.

30. At this juncture, it may be stated that this Court is not unaware of the recent directions of the Supreme Court in the case of **PHR Invent Educational Society v. UCO Bank & Ors.**[12] wherein it was held that High Court should not entertain the petition under Article 226 of the Constitution of India, 1950, particularly when an alternate statutory remedy is available and in this regard reference was made to decision in **Celir LLP v. Bafna Motors (Mumbai) Private Limited**[13] wherein it was held as under:

> "**101.** More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act and the SARFAESI Act and exercise of jurisdiction under Article 226 of the Constitution. Even after, the decision of this Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] , it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the RDBFI Act and the SARFAESI Act."

31. At the same time, it was also observed that there are certain exceptions carved out when a petition under Article 226 could be entertained in spite of availability of an alternate remedy, some of which were spelled out as under:

> (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
> (ii) it has acted in defiance of the fundamental principles of judicial procedure;
> (iii) it has resorted to invoke the provisions which are repealed; and
> (iv) when an order has been passed in total violation of the principles of natural justice."

[12] 2024 INSC 297
[13] (2024) 2 SCC 1

32. In the instant case, respondent No.1 has not only failed to act in accordance with the provisions of the Act but has also acted in blatant disregard of the fundamental principles of judicial procedure. It goes without saying that the petitioner, on his part, also preferred a complaint with the Ombudsman appointed by the respondent No.2/RBI on 12.11.2014 but then no action was taken on his complaint as per Regulation (9) and (10) of the Reserve Bank Ombudsman Integrated Scheme, 2021, which provided as follows:

> **"9. Grounds of Complaint**
> Any customer aggrieved by an act or omission of a Regulated Entity resulting in deficiency in service may file a complaint under the Scheme personally or through an authorized representative as defined under clause 3(1)(c).
>
> **10. Grounds for non-maintainability of a Complaint**
> (1) No complaint for deficiency in service shall lie under the Scheme in matters involving:
> (a) commercial judgment/decision of a Regulated Entity;
> (b) a dispute between a vendor and a Regulated Entity relating to an outsourcing contract;
> (c) a grievance not addressed to the Ombudsman directly;
> (d) general grievances against Management or Executives of a Regulated Entity;
> (e) a dispute in which action is initiated by a Regulated Entity in compliance with the orders of a statutory or law enforcing authority;
> (f) a service not within the regulatory purview of the Reserve Bank;
> (g) a dispute between Regulated Entities;
> (h) a dispute involving the employee-employer relationship of a Regulated Entity;
> (i)[14] a dispute for which a remedy has been provided in Section 18 of the Credit Information Companies (Regulation) Act, 2005; and

[14] Inserted by Notification Ref. CEPD. PRD. No. S544/13.01.001/2022-23 dated August 5, 2022

(j)[15] a dispute pertaining to customers of Regulated Entity not included under the Scheme.

(2) A complaint under the Scheme shall not lie unless:

(a) the complainant had, before making a complaint under the Scheme, made a written complaint to the Regulated Entity concerned and –

(i) the complaint was rejected wholly or partly by the Regulated Entity, and the complainant is not satisfied with the reply; or the complainant had not received any reply within 30 days after the Regulated Entity received the complaint; and

(ii) the complaint is made to the Ombudsman within one year after the complainant has received the reply from the Regulated Entity to the complaint or, where no reply is received, within one year and 30 days from the date of the complaint.

(b) the complaint is not in respect of the same cause of action which is already-

(i) pending before an Ombudsman or settled or dealt with on merits, by an Ombudsman, whether or not received from the same complainant or along with one or more complainants, or one or more of the parties concerned;

(ii) pending before any Court, Tribunal or Arbitrator or any other Forum or Authority; or, settled or dealt with on merits, by any Court, Tribunal or Arbitrator or any other Forum or Authority, whether or not received from the same complainant or along with one or more of the complainants/parties concerned;

(c) the complaint is not abusive or frivolous or vexatious in nature;

(d) the complaint to the Regulated Entity was made before the expiry of the period of limitation prescribed under the Limitation Act, 1963, for such claims;

(e) the complainant provides complete information as specified in clause 11 of the Scheme;

(f) the complaint is lodged by the complainant personally or through an authorised representative other than an advocate unless the advocate is the aggrieved person.

Explanation 1: For the purposes of sub-clause (2)(a), 'written complaint' shall include complaints made through other modes

[15] Inserted by Notification Ref. CEPD. PRD. No. S544/13.01.001/2022-23 dated August 5, 2022

where proof of having made a complaint can be produced by the complainant.
Explanation 2: For the purposes of sub-clause (2)(b)(ii), a complaint in respect of the same cause of action does not include criminal proceedings pending or decided before a Court or Tribunal or any police investigation initiated in a criminal offence."

33. A careful perusal of the aforesaid provisions reveals that the petitioner lodged a complaint with the Ombudsman/respondent No.2 within the period of limitation prescribed under the Limitation Act, 1963. It cannot be concluded that the complaint was abusive, frivolous or vexatious. The petitioner undeniably had a legitimate grievance against respondent No.1, as he fell victim to a misleading declaration in the Auction Notice. Respondent No. 1, without conducting proper due diligence, managed to sell the subject property to the petitioner for valuable consideration. This led to the petitioner being trapped into entering a home loan agreement, leaving him a victim of the high-handed actions of Respondent No. 1. Repeatedly, and at the cost of redundancy, despite giving repeated assurances, the officials of Respondent No. 1 failed to address the petitioner's genuine and legitimate grievance.

34. Furthermore, it is deeply unfortunate that, despite making the agreed payment, taking a loan, and repaying portions of it, the petitioner has never been able to enjoy the benefits of his hard-earned investment. In his repeated email correspondences, the petitioner highlighted his health issues and the severe mental and psychological trauma he was enduring – not only from being unable to secure

possession of the scheduled property but also from being denied a necessary refund.

RELIEFS:

35. In view of the foregoing discussion, I find that this is a fit case, where this Court should exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India, 1950. The writ petition is, therefore, allowed thereby, passing the following directions:

> **A**. A writ of *mandamus* is issued thereby quashing the sale certificate dated 24.12.2013 issued and signed by authorized officer of respondent No.1 in favour of the petitioner and declaring it to be 'null & void';
>
> **B**. A writ of *mandamus* is issued thereby, directing the respondent No.1 to refund the amount of Rs. 9,93,752.94 Paisa along with interest @ 12% per annum from 2013 till actual payment to the petitioner;
>
> **C**. A writ of *mandamus* is further issued to respondent No.1 thereby foreclosing the loan account bearing No. 4103753000000457 and return the amount of installments, if any, paid by the petitioner to the respondent No.1 with interest @12% per annum from the date of each payment till actual realization;
>
> **D**. Further, a writ of *mandamus* is issued to the respondent No.1 to remove the freeze marked by respondent No.1 on the savings account No. 4103172000004607 of the petitioner with the bank;
>
> **E**. The respondent No.2 is directed to initiate inquiry and take appropriate action for the arbitrary and unconscionable action on the part of respondent No.1 and take appropriate corrective measures by issuing appropriate guidelines in situations like the present cases;
>
> **F**. Lastly, for the trial and travails suffered by the petitioner in this long 11 years of litigation, this is a fit case where respondent No.1 should be burdened with exemplary cost and pay the same to the petitioner as

compensation including the cost of litigation, which is quantified at Rs. 5,00,000/-.

G. It is directed that the aforesaid payment be made to the petitioner within four weeks from today failing which the respondent No.1 shall be liable to pay interest on the aforesaid amount under each head @ 18% per annum with compound interest from the date of this judgment till realization.

36. The writ petition along with the pending application stands disposed of.

DHARMESH SHARMA, J.

DECEMBER 3, 2024
Sadiq