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WP-19856-2015

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 12th OF FEBRUARY, 2026WRIT PETITION No. 19856 of 2015*SMT. KAMLA DEVI AND OTHERS**Versus**BANK OF INDIA AND OTHERS*

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Appearance:

Shri Ramesh Kumar Verma, Senior Advocate with Shri Ram Murti Tiwari
and

Shri Munish Saini, Advocate for petitioners.

Shri Rajesh Maindiretta, Advocate for respondent No. 1.

Shri Avinash Gupta, Advocate for respondent No. 2.

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WITH

WRIT PETITION No. 5555 of 2017*SMT. SUNITA SINGH AND OTHERS**Versus**BANK OF INDIA AND OTHERS*

.....
Appearance:

Shri Avinash Gupta, Advocate for petitioners.

Shri Rajesh Maindiretta, Advocate for respondent/Bank.

Shri Ramesh Kumar Verma, Senior Advocate with Shri Ram Murti Tiwari
& Shri Munish Saini, Advocate for respondent Nos. 2 and 3.

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ORDER

Per. Justice Pradeep Mittal

Since both these writ petition involve a common issue, they
are heard and decided together by this common order. References to



the annexures and documents are taken from W.P. No. 19856 of 2015 for the sake of convenience.

2. The case, in brief, in W.P. No. 5555 of 2017 is that Late V.P. Singh, the husband of Petitioner No. 1 and father of Petitioner Nos. 2 to 4, is deceased. He, along with Petitioner No. 1, had constituted a partnership firm in the name and style of M/s R&R Oil Mills. The firm was the borrower. The firm availed an overdraft facility from the respondent Bank and mortgaged the following properties: (i) land measuring 7,200 sq. ft. situated at Khasra No. 77/1, Gwarighat, Narmada Road, Jabalpur (M.P.); and (ii) two plots, each measuring 2,400 sq. ft., situated at Khasra No. 77/17, Gwarighat Ward, Jabalpur (M.P.) (hereinafter referred to as the “mortgaged properties”). M/s R&R Oil Mills failed to repay the outstanding dues. Consequently, the respondent Bank initiated recovery proceedings under Section 13(4) of the SARFAESI Act, 2002. A sale notice was published in the newspaper dated 23.01.2010 by the Bank, and the auction was scheduled for 10.02.2010. However, the Bank failed to auction the mortgaged properties on the said date. Thereafter, it is alleged that the Bank entered into a private treaty with a third party under the guise of an auction, without informing the petitioners or obtaining their written consent. Subsequent to the scheduled auction date, the petitioners



secured the release of one of the mortgaged properties measuring 6,000 sq. ft. by paying Rs. 24 lakhs towards the outstanding dues of M/s R&R Oil Mills. The petitioners claim that they became aware of the alleged private treaty only when Respondent No. 2, Sunita Singh, filed Civil Suit No. 119-A/2013 against the respondent Bank seeking execution of a sale deed in respect of the mortgaged properties. She claimed that the properties had been purchased by her late husband, Shri V.P. Singh, who died on 06.07.2011, and that the Bank had failed to execute the sale deed in her favour. The petitioners remain in possession of the mortgaged properties and are regularly paying property taxes and other dues. One of the mortgaged properties was let out to M/s Hathway Cable & Datacom Ltd. up to 30.09.2015. The Petitioners submitted a representation dated 02.11.2015 to the respondent Bank protesting the alleged private treaty conducted without their consent and requesting release of the mortgaged properties. Respondent Bank failed to respond to the said representation and did not release the mortgaged properties. Petitioner No. 1 also issued Cheque No. 680685 in favour of the Bank for Rs. 28 lakhs and requested the Bank not to create any third-party interest in the mortgaged properties.

3. It is submitted that the petitioners have filed this petition raising the following grounds. The Bank acted in an arbitrary and illegal



manner, contrary to the provisions of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002. The Bank's letter dated 28.09.2012 addressed to Respondent No. 2 clearly indicates that no auction was held on 10.02.2010, nor was any fresh publication issued or notice of extension of the auction date served upon the petitioners. Therefore, the alleged private treaty and related proceedings are illegal, null and void, and not binding upon the petitioners. Entire action of the respondent Bank is contrary to the provisions of the SARFAESI Act, 2002, the Security Interest (Enforcement) Rules, 2002, Section 60 of the Transfer of Property Act, 1882, and Article 300A of the Constitution of India.

4. It is submitted that the private treaty entered into by the respondent Bank is illegal, arbitrary, and not binding upon the petitioners. No notice was served upon the petitioners as mandatorily required under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 framed under the SARFAESI Act, 2002. That the respondent Bank could not have entered into any private treaty without obtaining the prior written consent of the petitioners. Further, under Rule 9(4) of the Security Interest (Enforcement) Rules, 2002, the Bank has no authority to extend the time for deposit of the balance sale consideration without the written consent of the borrower. No such consent was ever given by Petitioner No. 1 (Smt. Kamla Devi) or by



any partner of M/s R & R Oil Mills. That no auction was conducted on 10.02.2010. The respondent Bank, by attempting to dispose of the property without following the statutory procedure, is acting beyond its authority and seeks to deprive the petitioners of their constitutional right to property under Article 300A of the Constitution of India. under the SARFAESI Act, 2002 and the Rules of 2002, issuance of a fresh notice giving 30 clear days is mandatory before effecting any sale. No such notice was issued to the petitioners. Therefore, any transaction undertaken behind their back is illegal, null and void.

5. It is submitted that neither any sale certificate has been issued nor any sale deed has been registered by the respondent Bank in favour of Respondent No. 2. Consequently, the petitioners' statutory right of redemption under Section 60 of the Transfer of Property Act, 1882 continues to subsist. It is submitted that the law laid down by the Hon'ble Supreme Court in *Narandas Karsondas v. S.A. Kamtam* (1977) 3 SCC 247 and in *Mathew Varghese v. M. Amritha Kumar &Ors.* (2014) 5 SCC 610 clearly holds that the mortgagor's right of redemption survives until the sale is completed by execution of a registered sale deed. In the present case, no such registered deed has been executed. In W.P. No. 2317/2013, by order dated 25.02.2013, this Court restrained the Bank from proceeding further with the sale



of the property, holding that the procedure adopted was contrary to Rule 8 of the Security Interest (Enforcement) Rules, 2002. In view of the judgment in **J. Rajiv Subramanian & Anr. v. M/s Pandiyas & Ors.**, 2012 (1) BJ 832, a nationalised bank exceeds its authority if it enters into a private treaty without the written consent/willingness of the borrower as required under Rule 8 of the Security Interest (Enforcement) Rules, 2002. It is submitted that in these circumstances, this Court has ample jurisdiction to exercise its powers under Article 226 of the Constitution of India and grant appropriate relief to the petitioners.

6. The petitioners in W.P. No.5555 of 2017 are aggrieved by a communication dated 28.9.2012 whereby the Bank has demanded production of legal heir certificate for processing the issuance of the sale certification in favour of the petitioners along with release of the property upon payment of dues and return of original title deeds.

7. Learned counsel for the respondent submits that the allegations are incorrect and contrary to the record. Petitioner No. 2, as proprietor of M/s R.R. Oil Mills, had availed financial assistance from the respondent Bank but failed to repay the dues. Accordingly, the Bank initiated proceedings under the SARFAESI Act, 2002 by issuing a demand notice under Section 13(2) dated 04.03.2009, followed by a



possession notice under Section 13(4). Both notices were duly published in newspapers. Thereafter, the Bank issued an auction sale notice. In the auction conducted on 24.02.2010, the husband of Respondent No. 2 submitted the highest bid of Rs. 28,00,000/-. Despite repeated communications from the Bank, he did not complete the formalities for registration of the sale certificate. After his demise, the Bank informed Respondent No. 2 to submit a legal heir certificate for completion of registration. The said communication is under challenge in separate proceedings. The petitioners were fully aware of the auction proceedings and the sale of the property. Subsequently, Petitioner No. 1 approached the Bank and deposited Rs. 24,00,000/- towards full and final settlement of the remaining dues, upon which the unsold properties were released and the original title deeds were returned. The petitioners acknowledged receipt of the same. The multiple civil proceedings were initiated by the parties concerning the mortgaged property, including suits and appeals filed by both the petitioners and Respondent No. 2. These proceedings clearly demonstrate that the petitioners were aware that the property had been sold in auction to the husband of Respondent No. 2. The allegation that the property was sold through a private treaty is false and misleading. The sale was conducted pursuant to auction proceedings under the SARFAESI Act, 2002. The contentions raised in the writ



petition are baseless, contrary to the record, and devoid of merit. The respondents pray for dismissal of the writ petition.

8. The petitioners have filed a rejoinder to the reply stating therein that the respondent Bank, in its reply, has wrongly asserted that the petitioners have misstated the facts and that all mandatory procedures under the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002 were duly followed. The said assertion is incorrect. The petitioner further submits that present rejoinder is filed to highlight the serious procedural lapses committed by the Bank, which go to the root of the matter and render the alleged sale in favour of Late Shri V.P. Singh invalid. The Bank failed to comply with the mandatory requirements prescribed under Sections 13(2) and 13(4) of the SARFAESI Act read with the Rules of 2002. No clear 30 days' sale notice, as required under Rule 8(6), was ever served upon the petitioners. The auction publication relied upon by the Bank does not satisfy the statutory requirement of proper publication in accordance with the Rules. The so-called auction process was, in substance, a private treaty conducted under the guise of a public auction, without prior written consent of the petitioners. The Act and the Rules do not permit such a procedure without strict compliance with mandatory safeguards. The valuation of the property was not obtained from an approved valuer, the reserve price was not properly



fixed in accordance with law, and due publication requirements were not fulfilled. The petitioners were not supplied relevant documents despite repeated requests. The sale proceedings were conducted without proper notice, without compliance with statutory requirements, and without affording the petitioners a fair opportunity to redeem the property. Since the mandatory provisions relating to demand notice, possession, valuation, sale notice, and publication have not been complied with, the alleged sale is illegal, arbitrary, and violative of the SARFAESI Act, 2002, the Transfer of Property Act, 1882, and Article 300A of the Constitution of India.

9. Heard the learned counsel for the parties.

10. It is evident from the record that the Bank auctioned the property for Rs. 28,00,000/-, which had been mortgaged by the petitioners with the respondent Bank. Thereafter, the petitioners settled the account on 30.03.2012 and deposited the remaining amount with the Bank, thereby redeeming the property. These facts clearly show that the auction of the disputed property was within the knowledge of the petitioners from the very beginning, and they accepted and honoured the amount of Rs. 28,00,000/- deposited by the auction purchaser.

11. On 30 march 2012 bank issued a certificate that mortgage



property has been released from mortgage, which shown the property sold in auction proceeding, that document produced by the petitioner that document has shown, it was in the knowledge to prior that the property had been sold in auction and petitioner never challenged it before the DRT.

12. The respondent Bank issued a notice (Annexure R/1) under Section 13 of the SARFAESI Act, 2002 to the petitioners through registered post on 04.03.2009, and the notice was also published in newspapers dated 27.05.2009 and 28.05.2009 (Annexure R-1/2). The respondent Bank took possession of the secured asset on 25.09.2009. Thereafter, the Bank conducted the auction on 24.02.2010 and issued a notice to the auction purchaser for issuance of the sale certificate. It is stated by the learned counsel for the Bank that the Bank vide communications dated 9.4.2010 (Annexure R1/1), 13.4.2010 (Annexure R1/2), 23.5.2010 (Annexure R1/3) and 2.07.2010 (Annexure R1/4) wrote to late Shri V.P. Singh to get the sale certificate registered. However, on acquiring the knowledge about the demise of late Shri V.P. Singh the Bank wrote to the petitioner No. 1 to get the sale certificate on production of the legal heir certificate.

13. The petitioners submitted a letter to the Bank and settled the



loan amount of Rs. 24,00,000/- on 30.03.2012. On the same date, i.e., 30.03.2012, a certificate was issued for redemption of the property. These facts clearly demonstrate that the petitioners had knowledge of the auction proceedings at least by 30.03.2012; however, they never challenged the auction proceedings before the Debts Recovery Tribunal (DRT).

14. The contention that one of the mortgaged properties had been let out to M/s Hathway Cable & Datacom Ltd. up to 30.09.2015 is not reliable, as the said document was prepared on 28.03.2013, nearly three years after the auction proceedings had been completed.

15. The petitioners raised several issues regarding non-compliance with the provisions of the SARFAESI Act, 2002; however, the respondent denied the same. Therefore, such disputed questions of fact cannot be adjudicated in the exercise of writ jurisdiction.

16. The petitioners never challenged the auction proceedings before the Debts Recovery Tribunal (DRT) despite having notice thereof. Consequently, the auction proceedings attained finality and cannot be challenged after five years by way of a writ petition under Article 226 of the Constitution of India.

17. It is also disputed whether the property was sold through a



public auction or by way of private treaty. A private treaty is permissible under Rule 8(5) of the Security Interest (Enforcement) Rules, 2002, but ordinarily only after an attempt to sell the property through public auction or tender has failed.

18. A sale by private treaty should ideally be conducted with the written consent of the borrower. However, the conduct of the petitioners indicates confirmation of the auction, suggesting that a formal written agreement with the borrower may not be mandatory if the Bank has acted in good faith.

19. Further, the fact that the borrower had knowledge of the sale but failed to take any action within the prescribed period of 45 days constitutes a significant impediment to the petitioner's challenge. A sale certificate issued to an auction purchaser upon confirmation of a sale is mere evidence of title and does not require compulsory registration under Section 17(1) of the Registration Act, 1908. In 2024 SCC OnLine SC 3372 *State of Punjab and Another Versus Ferrous Alloy Forgings P Ltd. and Others* the Hon'ble Apex court has clarified that as long as the certificate remains in its original form, it is exempt from registration, and filing a copy under Section 89(4) of the Registration Act is sufficient. It means that once the Bank issues the sale certificate and informs the auction purchaser about its



issuance, the sale certificate is deemed to have been issued by the Bank. Only the registration of the sale certificate remains pending, if the auction purchaser desires to have it registered. If the legal heirs of the auction purchaser seek to register the sale certificate in their favour or request issuance of another sale certificate in place of the auction purchaser, it does not amount to non-issuance of the original sale certificate. Therefore, we hold that the sale certificate has already been issued in favour of the auction purchaser, and consequently, the right of redemption stands closed upon the issuance of the sale certificate.

20. We are of the opinion that the petitioner had knowledge of the auction of the mortgaged property but did not challenge it before the Debts Recovery Tribunal (DRT). After the auction purchaser deposited Rs. 28,00,000/-, the petitioner also deposited the remaining amount of Rs. 24,00,000/- with the Bank and obtained release of the remaining property from mortgage. On the same day, the Bank issued a notice releasing the property from mortgage.

21. The aforesaid facts are sufficient to hold that the auction proceeding was conducted with the knowledge and implied consent of the petitioners.

22. The substantive facts are disputed and can only be determined



after affording both parties an opportunity to lead evidence; therefore, such issues cannot be adjudicated in writ jurisdiction. The petitioner has wrongly contended that no alternative remedy was available, despite the DRT being the competent authority to examine the dispute. The petitioner ought to have approached the DRT within the prescribed period of limitation. A time-barred remedy cannot be revived or granted by way of a writ petition.

23. The relief of redemption cannot ordinarily be treated as time-barred, as the fundamental principle of mortgage law is “once a mortgage, always a mortgage,” until the right of redemption is lawfully extinguished.

24. The Hon’ble Supreme Court, in the case of **M. Rajendran & Ors. v. M/s KPK Oils and Proteins India Pvt. Ltd. & Ors.**, reported in **2025 LiveLaw (SC) 931**, has clarified that the amended provision—whereby the right of redemption stands extinguished upon publication of the sale notice applies even to loans advanced prior to the amendment, provided the default (i.e., classification as NPA) occurred after 1 September 2016.

25. Therefore, if the SARFAESI proceedings were initiated prior to the 2016 amendment (i.e., the default and consequential action occurred before 1 September 2016), the unamended provision would



apply, and the borrower would retain the right of redemption until the sale certificate is issued.

26. It has been held by the Hon'ble Apex Court that the petitioner has the right to redeem the property until the sale certificate is issued under the unamended provision. In the present case, the Bank has already issued the sale certificate; therefore, the borrower's right of redemption would not subsist.

27. Considering the above facts and circumstances of the case, W.P. No. 19856 of 2015 is dismissed and W.P. No. 5555 of 2017 is disposed of with a direction to the Bank to hand over the sale certificate to the legal heirs of the auction purchaser. If the legal heirs of the auction purchaser desire to register the sale certificate, the Bank shall take appropriate steps to have it registered in accordance with law.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE

MSP