Mathew Varghese

v.

M. Amritha Kumar & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE A.K. PATNAIK HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

Civil Appeal No. 1927 Of 2014, 1928 Of 2014 & 1929 Of 2014 | 10-02-2014

Fakkir Mohammed Ibrahim Kalifulla, J.

1. Leave granted.

2. This appeal by the purchaser, in a tender-cum-auction sale held by the 4th Respondent—Bank, is directed against the judgments and final orders dated 8-3-2010 in Writ Appeal No. 1555 of 2009, Order dated 18-6-2010 in I.A. No. 437 of 2010 in Writ Appeal No. 1555 of 2009 and Order dated 8-7-2010 in I.A. No. 507 of 2010 in Writ Appeal No. 1555 of 2009 passed by the High Court of Kerala at Ernakulam.

3. The interesting but very serious question that arises for consideration in this appeal is as regards the interpretation of Section 13(8) of the SARFAESI Act read with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as "the Rules, 2002").

4. The 1st and 2nd Respondents herein stood as guarantors in respect of a credit facility to the tune of Rs. 30,00,000/- granted by the 4th Respondent—Bank in favour of a company called 'Jerry Merry Exports Private Limited'. As guarantors, the 1st and 2nd Respondents created an EQUITABLE MORTGAGE in favour of 4th Respondent—Bank by depositing the title deeds of their property bearing Survey No. 150/12A (40.20 cents), Survey No. 150/12C (11 cents) and Survey No. 150/13 (26 cents) totaling 77.20 cents situated in Padivattom Kana, Edappally South Village, Kanayanoor Taluk, Ernakulam District Kochi, Kerala (hereinafter referred to as "the mortgage

property"). When the transaction became a NON-PERFORMING ASSET, the 4th Respondent—Bank filed O.A. No. 31 of 2002 for recovery of Rs. 33,77,053/- along with interest @ 18% per annum. The 4th Respondent—Bank also issued a notice under Section 13(2) of the SARFAESI Act on 11-8-2006 for a sum of Rs. 70,77,590/-. On 20-2-2007, the 4th Respondent—Bank is stated to have taken possession of the mortgaged property by invoking Section 13(4) of SARFAESI Act, read along with Rules 8 and 9 of the Rules, 2002.

5. The 1st and 2nd Respondents filed a Securitisation Application i.e. S.A. No. 20 of 2007, before the Debt Recovery Tribunal (hereinafter referred to as "the DRT'" Ernakulam, challenging the possession notice dated 20-2-2007 and additionally also for an Order to restrain the 4th Respondent—Bank from evicting Respondents 1 and 2. Between 9-5-2007 and 24-7-2007 the attempts made for One Time Settlement (hereinafter referred to as "OTS'" also failed and the 4th Respondent—Bank withdrew its offer of OTS, which was in a sum of Rs. 55,00,000/-.

6. On 14-8-2007, the 4th Respondent—Bank issued a notice to Respondents 1 and 2, as well as others of its intention to sell the property under Rule 8(6) of the Rules, 2002 by fixing a reserve price of Rs. 1,25,00,000/-. On 23-8-2007, the 4th Respondent—Bank published its notice of sale of property in Indian Express and Mathrubhoomi, inviting tenders-cum-auction from the public. The 1st and 2nd Respondents were informed by the 4th Respondent—Bank by its notice dated 30-8-2007, about the publication made on 23-8-2007 and also enclosed a tender form along with the terms and conditions for participation in the tender. The Appellant and one M/s Kent Construction stated to have submitted their tenders on 30-8-2007 and 1-9-2007.

7. On 20-9-2007, the 1st and 2nd Respondents filed W.P. No. 27182 of 2007 challenging the proceedings initiated under the SARFAESI Act. The said writ petition was disposed of by a learned Single Judge of the Kerala High Court by Order dated 20-9-2007. By the said order, the High Court after taking note of the O.A. filed by the 4th Respondent—Bank, as well as S.A. filed by the 1st and 2nd Respondents, directed the DRT to hear the parties and dispose of both the cases or at least the Securitisation Application filed by the 1st and 2nd Respondents without any delay. The High Court also noted that at that point of time, the DRT had fixed 12-10-2007 as the date for disposal of both the

applications. While issuing the said directions, the learned Judge gave liberty to the parties to settle the liability and also directed the 4th Respondent—Bank to defer the sale posted on 25-9-2007 by six weeks, by imposing a condition on Respondents 1 and 2 to deposit a sum of Rs. 10,00,000/- before the date of sale, i.e. 25-9-2007. It was also observed therein that since the 4th Respondent—Bank had agreed for OTS in a sum of Rs. 55,00,000/-, the bank should waive interest if the 1st and 2nd Respondents offer a settlement within a reasonable time and by making payment of the said amount.

8. It is common ground that pursuant to the said Order dated 20-9-2007, the sale which was scheduled to be held on 25-9-2007 was postponed. In fact, though the six weeks period prescribed in the Order dated 20-9-2007 expired by 10-11-2007, it is stated that even thereafter the sale was not effected. Pursuant to the said order, the 1st and 2nd Respondents stated to have deposited the sum of Rs. 10,00,000/- with the 4th Respondent—Bank. On 27-12-2007, the DRT passed Orders in S.A. No. 20 of 2007 dismissing the said application with costs. On the next day i.e. on 28-12-2007, the 4th Respondent—Bank accepted the tender of the Appellant who offered a sum of Rs. 1,27,00,101/- and asked the Appellant to deposit 25% of the amount i.e. Rs. 31,75,025/- on that day itself and pay the balance amount within 15 days. The Appellant is stated to have deposited the 25% of the total bid amount offered by it with the 4th Respondent—Bank. The Appellant is also stated to have deposited the balance amount on 11-1-2008. After deposit of 25% of the bid amount on 31-12-2007, the 4th Respondent—Bank confirmed the sale in favour of the Appellant and gave further time of 15 days for depositing the balance amount.

9. After depositing the balance amount by the Appellant on 11-1-2008 and the confirmation of the sale in favour of the Appellant, the 4th Respondent—Bank informed the Respondents 1 and 2 on 2-2-2008, about the confirmation of sale in favour of the Appellant and also the receipt of the entire consideration. The Respondents 1 and 2 were directed to collect the balance amount available with the 4th Respondent—Bank. On 12-2-2008, the Respondents 1 and 2 filed a Review Petition No. 157 of 2008 in W.P. No. 27182 of 2007. The said Review Petition was dismissed giving liberty to Respondents 1 and 2 to challenge the sale. The Respondents 1 and 2 filed a Writ Petition No. 5876 of 2008 on 18-2-2008, challenging the vires of the Rules, 2002 on the ground that it violated their right of redemption by denying them adequate opportunity and time to repay the borrowed sum and the action of the Bank in having acted

surreptitiously in selling the property without informing them. The said writ petition was dismissed by the learned Single Judge by Order dated 12-6-2009, on the ground that the Respondents 1 and 2 got an alternative efficacious remedy available under the SARFAESI Act. As against the said Order, Respondents 1 and 2 filed Writ Appeal No. 1555 of 2009, on 16-7-2009. In the meantime, on 24-6-2009, the 4th Respondent—Bank transferred the property in favour of the Appellant under a duly registered certificate of sale.

10. By the order impugned, the Division Bench took the view that the sale was not conducted in a fair and proper manner, that when the sale was initially postponed by six weeks from 25-9-2007, the Bank ought to have re-notified the sale or at least extended the time for receiving further tenders, particularly when only one valid tender was received on the last date notified for sale. The Division Bench further held that the sale was not even informed to Respondents 1 and 2 and they were informed only after the confirmation of the sale and after receipt of their full consideration. The Division Bench, therefore, set aside the sale which was already executed in favour of the Appellant by imposing a condition that Respondents 1 and 2 furnish a Demand Draft of Rs. 2,00,00,000/- from a local branch of a Nationalised Bank in favour of the Appellant and hand over the same to him, within a period of two months from the date of the Order. It further held that if payment was not made, as directed, the sale in favour of the Appellant would stand confirmed and the Writ Appeal would automatically stand dismissed. In the event of the payment of Rs. 2,00,00,000/- being made in the form of a Demand Draft, the Appellant was directed to hand over the original sale deed obtained by him from the Bank to enable Respondents 1 and 2 to approach the Sub-Registrar and Revenue Authorities for cancellation of registration, consequent mutation, etc.

11. There was also a direction to the Sub-Registrar to restore the property in the name of the 1st and 2nd Respondents. On payment of the sum of Rs. 2,00,00,000/-, the Bank was directed to remit the excess amount available with them to the Tax Recovery Officer in pursuance of the demand already made by it and to credit the said amount in the account of Respondents 1 and 2. Liberty was also given to Respondents 1 and 2 to claim for refund, if they were eligible for any. Additionally, liberty was also given to Respondents 1 and 2 to refund the stamp duty, if they were eligible for such refund. The period of two months granted by the Division Bench for Respondents 1 and 2 to deposit a sum of Rs. 2,00,00,000/- expired by 8-5-2010.

12. Respondents 1 and 2 did not make the payment within the said date, as directed by the Division Bench. Instead an application was filed by the Respondents 1 and 2 in I.A. No. 437 of 2010 in Writ Appeal No. 1555 of 2009 seeking for further six weeks time to effect the payment of Rs. 2,00,00,000/- to the Appellant. In the said I.A. No. 437 of 2010, the Division Bench passed its order on 18-6-2010, extending the time till 20-6-2010. The said extension was granted by holding that on such deposit, sale made by the 4th Respondent—Bank in favour of the Appellant would stand cancelled and the Bank should effect the sale in favour of the 8th Respondent in Special Leave Petition No. 21434 of 2010, namely, Mr. Koshi Phillip s/o Mathai Koshi, who shall hereinafter be referred to as the 8th Respondent. The 8th Respondent herein was directed to deposit Rs. 2,03,00,000/- before the 4th Respondent—Bank on 19-6-2010 and the time granted for payment in terms of the judgment was extended till 20-6-2010. Subsequently, in I.A. No. 507 of 2010, the Division Bench after noting that the Appellant had not withdrawn the amounts deposited with the 4th Respondent—Bank by stating that he has approached this Court by way of a Special Leave Petition and after finding that mere steps taken by the Appellant for filing the Special Leave Petition need not stand in the way of executing the sale deed in favour of the 8th Respondent who had deposited the entire amount. In effect, the said I.A. No. 507 of 2010 in Writ Appeal No. 1555 of 2009 was allowed and the Bank was directed to execute the sale deed in favour of the 8th Respondent for the sale consideration of Rs. 2,03,00,000/-.

13. As against the judgment in Writ Appeal No. 1555 of 2009 and the orders passed in I.A. Nos. 437 of 2010 and 507 of 2010, the Appellant has come forward with these appeals.

14. We heard Mr. Krishnan Venugopal, Senior Counsel for the Appellant, Mr. Shyam Divan, Senior Counsel for the 8th Respondent and Mr. C.U. Singh, Senior Counsel for the Respondents 1 and 2. Mr. Krishnan Venugopal, Senior Counsel for the Appellant in his submissions after referring to Section 13(8) of the SARFAESI Act and Rules 8 and 9 of the Rules, 2002 and after drawing our attention to the initial order of the learned Single Judge dated 20-9-2007 in Writ Petition No. 27182 of 2007, submitted that by virtue of the said order of the High Court, the requirement of Section 13(8), as well as corresponding Rules were duly taken care of and the outer date for sale was prescribed in the said

order itself and once the debtor, namely, Respondents 1 and 2 failed to avail the said opportunity extended by the High Court, they cannot be allowed to complain about the ultimate sale effected on 28-12-2007. The learned Senior Counsel contended that in the Order dated 20-9-2007, the High Court while directing the DRT to hear the parties and dispose of the O.A. and S.A. without any delay gave an option to Respondents 1 and 2 to settle the dues by making the payment of Rs. 55,00,000/-, which was the OTS offered by the 4th Respondent—Bank with an observation that in the event of Respondents 1 and 2 making the said payment, the 4th Respondent—Bank should consider waiving interest on the said amount.

15. According to the learned Senior Counsel, when the 1st and 2nd Respondents failed to avail the said opportunity offered in the Order dated 20-9-2007, by which order, the sale which was scheduled to be held on 25-9-2007 was directed to be postponed by six weeks, the 1st and 2nd Respondents cannot subsequently be heard to complain of any irregularity in the sale. The learned Senior Counsel would, therefore, contend that in effect, the said Order dated 20-9-2007 of the High Court, took into account the entitlements of the guarantors who stepped into the shoes of the borrowers as provided under Section 13(8) of the SARFAESI Act, and therefore, the sale effected after the expiry of the period of six weeks granted by the High Court and after the dismissal of the guarantors application, namely, S.A. by the DRT, i.e. on 28-12-2007, cannot be held to be in violation of the Section 13(8) of the SARFAESI Act.

16. The learned Senior Counsel further contended that by the impugned order, the Division Bench exercised its jurisdiction under Article 226 of the Constitution, which this Court held ought not to have been exercised, when Respondents 1 and 2, as guarantors, had every right to work out their remedy as against the sale effected on 28-12-2007, under the provisions of the SARFAESI Act. The learned Senior Counsel also contended that once the sale has been effected and confirmed in accordance with law, merely because someone else can offer a higher amount, the Court should not have interfered with the already confirmed sale as that would become an unending affair if such approach made by parties are entertained. In support of his submissions, the learned Senior Counsel relied upon ValjiKhimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and others ((2008) 9 SCC 299) and United Bank of India v. Satyawati Tondon and others ((2010) 8 SCC 110). The learned Senior Counsel also contended that in any event, once the Division

bench ultimately directed Respondents 1 and 2 to deposit the sum of Rs. 2,00,00,000/- within two months, i.e. on or before 8-5-2010, and the Respondents 1 and 2 failed to comply with the said condition, the order worked itself out and the Writ Appeal stood dismissed without any further reference to the Court. According to the counsel, the extension of further time granted by the Division Bench in a belated application of Respondents 1 and 2 and modification of the conditional payment to be made by the 8th Respondent, was beyond the powers of the Court and consequently the sale already effected by the 4th Respondent—Bank in favour of the Appellant became final and conclusive. The learned senior counsel, therefore, contended that the subsequent Order of the Division Bench dated 18-6-2010 in I.A. No. 437 of 2010 and the order dated 8-7-2010 in I.A. No. 507 of 2010, cannot be sustained.

17. As against the above submissions made on behalf of the Appellant, the submission of Mr. Shyam Divan, learned Senior Counsel for the 8th Respondent was six-fold. According to Mr. Divan, the mortgagor's right of redemption is a statutorily recognized one and continues till the time of registration of the sale, that the said general principle is engrafted in Section 13(8) of the SARFAESI Act read with Rules 8 and 9 of the Rules, 2002, that it is incumbent upon the Bank to have informed the borrower about the date and time of the sale, which is implicit in the provision, that admittedly no notice was given by the Bank with reference to the sale held on 28-12-2007, that in any case since there was a postponement of the original sale scheduled, there ought to have been a fresh notification and, therefore, the High Court's conclusion about non-issuance of sale notice was well justified. The learned senior counsel contended that eventually the order of the Division Bench of the High Court was equitable and, therefore, does not call for interference. Mr. Divan, learned Senior Counsel, drew support from Section 60 of the Transfer of Property Act, 1882 (hereinafter referred to as "the T.P. Act'" by relying upon the interpretation made by this Court on mortgagor's right of redemption engrafted in Section 60 of the T.P. Act in the decision reported in NarandasKarsondas v. S.A. Kamtam and another ((1977) 3 SCC 247)

18. By drawing a parallel to Section 13(8) of the SARFAESI Act vis-à-vis Section 60 of the T.P. Act, the learned Senior Counsel submitted that there should have been a definite intimation to the borrower before the sale or transfer, which is a legal requirement both under Section 13(8) read with Rules 8(6) and 9(1), as well as Section 60 of the T.P. Act. By referring to the initial

notice issued by the Bank on 23-8-2007, the learned Senior Counsel contended that the period mentioned therein did not survive after the passing of the order by the DRT on 27-12-2007 and if that initial notice was to be revived for the purpose of effecting the sale and transfer, the borrower ought to have been mandatorily put on notice as prescribed under Section 13(8) of the SARFAESI Act. The learned Senior Counsel also relied upon Order XXI Rules 64 to 69 and submitted that in common law as well, when once a sale is adjourned to a specific date, a future proclamation was the requirement as that alone would enable the mortgagor to ensure that his valuable right of ownership is not frittered away without providing any opportunity for redemption.

19. The learned Senior Counsel by relying upon Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the RDDB Act'" and Section 37 of the SARFAESI Act, read along with Rule 15 of the Second Schedule of the Income Tax (Certificate Proceedings Rules, 1962) (hereinafter referred to as "the Income Tax Rules, 1962'", contended that even under the provisions of the SARFAESI Act, there is a statutory requirement for renotification to effect the sale and, therefore, the non-compliance of the said requirement would render the sale effected by the Bank on 28-12-2007 invalid in law.

20. The learned Senior Counsel pointed out that after the postponement of the sale pursuant to the deposit of Rs. 10,00,000/- on 25-9-2007, based on the judgment of the High Court dated 20-9-2007, the only intimation to the borrower at the instance of the Bank was dated 2-2-2008, which only said that surplus amount over and above the money due to the Bank was adjusted and, therefore, the said notice was not in consonance with the provisions of the SARFAESI Act and the other statutory provisions required to be complied with and, therefore, the judgment of the Division Bench of the High Court does not call for interference. The learned Senior Counsel drew our attention to various grounds raised in the writ petition wherein the above contentions of the borrower have been set out.

21. Supporting the submissions made by Mr. Shyam Divan, Mr. Shyam Divan, Mr. C.U. Singh, learned Senior Counsel for the Respondents No. 1 and 2, submitted that the non-obstante clause in Section 13(1) of the SARFAESI Act read along with Section 60, as well as, Sections 69 and 69A of the T.P. Act,

would show that under Section 13(1) of the SARFAESI Act the non-obstante clause is restricted to Section 69 or 69A of the T.P. Act, and that the implication of Section 60 of the T.P. Act would apply in full force. According to the learned Senior Counsel, while the 4th Respondent—Bank made no mention about the other bidders in the High Court and merely submitted that the bid submitted by the Appellant was opened and confirmed, in the counter filed before this Court, they came forward with a statement that pursuant to the paper publication two tenders were received and the Appellant was one of them, while the other one was one M/s Kent Construction. The learned Senior Counsel also pointed out that in paragraph 35 of the said Counter Affidavit of the Bank before this Court, they further stated that the conclusion of the Division Bench that there was a sole bidder was incorrect, as there were two bidders wherein one of them withdrew from bid on account of the earlier order of the High Court dated 20-9-2007. By referring to the above facts stated on behalf of the Bank before the High Court and before this Court, the learned Senior Counsel contended that the only conclusion that can be drawn was that there was no transparency at all in conducting the sale. The learned Senior Counsel relied upon Ram Kishun and others v. State of Uttar Pradesh and others ((2012) 11 SCC 511).

22. Having heard the learned counsel for the respective parties and having perused the Judgments and the Orders impugned in these appeals and other material papers, in the first instance, we wish to deal with the appeal filed against the Judgment dated 8-3-2010 in Writ Appeal No. 1555 of 2009. The Division Bench, after holding that the sale was not conducted in a fair and reasonable manner and thereby the borrower's rights have been seriously infringed, set aside the sale effected on 28-12-2007, in favour of the Appellant and directed the borrowers to give a Demand Draft for Rs. 2,00,00,000/- drawn on a local branch of a Nationalised Bank in favour of the Appellant and hand over the same to him within a period of two months from the date of the Judgment. It further held that if the payment was not made, as directed, the sale in favour of the Appellant would stand confirmed and the writ appeal would stand dismissed.

23. In order to examine the correctness of the impugned Judgment of the Division Bench, a serious look into Section 13, in particular sub-section (8) of the SARFAESI Act along with Rules 8 and 9 of the Rules, 2002 is required.

We, therefore, deem it appropriate to extract Sections 29(zc), 2(zf), 13(1) and (8) of the SARFAESI Act, as well as Rule 8 sub-rules (1), (3), (5) and (6) and also Rule 9(1) which are as under:

"2(zc) 'secured asset' means the property on which security interest is created;

2(zf) 'security interest' means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in Section 31;

13. Enforcement of security interest.- (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.

Rule 8. Sale of immovable secured assets.- (1) Where the secured asset is an immovable property, the authorised 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.

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised 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.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of Rule 9, the authorised 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; or

(d) by private treaty.

(6) The authorised 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 two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, 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, 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) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

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

(1) No sale of immovable property under these rules 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) or notice of sale has been served to the borrower."

24. Under Section 13(1), it is provided that any security interest created in favour of the SECURED CREDITOR may be enforced without the intervention of the Court and Tribunal by such creditor in accordance with the provisions of this Act. The non-obstante clause in the opening set of expressions contained in Section 13(1), as pointed out by Mr. Singh, learned Senior Counsel for the borrowers, is restricted to Section 69 or Section 69A of the T.P. Act. Apart from noting the said statutory impediment, to be noted in Section 13(1), the more important feature to be noted is that a free hand is given to the SECURED CREDITOR for the purpose of enforcing any security interest created in favour of SECURED CREDITOR, without the intervention of the Court or Tribunal. The only other relevant aspect contained in the said sub-section is that such enforcement should be in accordance with the provisions of this Act. A reading of Section 13(1), therefore, is clear to the effect that while on the one hand any SECURED CREDITOR may be entitled to enforce the SECURED ASSET created in its favour on its own without resorting to any court proceedings or approaching the Tribunal, such enforcement should be in conformity with the other provisions of the SARFAESI Act.

25. Keeping the said stipulation contained in Section 13(1) in mind, it will have to be examined as to what are the other statutory requirements to be fulfilled when enforcement of a right created in favour of any SECURED CREDITOR in respect of a security interest is created. As we are concerned with the sale of property mortgaged by the borrowers, for the present we leave aside any other form or mode of enforcement, except the one relating to the equitable mortgage created in favour of the Bank. For that purpose, we find that sub-section (8) of Section 13 would be relevant.

26. A careful reading of sub-section (8), therefore, has to be made to appreciate the legal issue involved and the submissions made by the respective counsel on the said provision.

A plain reading of sub-section (8) would show that a borrower can tender to the SECURED CREDITOR the dues together with all costs, charges and expenses incurred by the SECURED CREDITOR at any time before the date fixed for sale or transfer. In the event of such tender once made as stipulated in the said provision, the mandate is that the SECURED ASSET should not be sold or transferred by the SECURED CREDITOR. It is further reinforced to the effect that no further step should also be taken by the SECURED CREDITOR for transfer or sale of the SECURED ASSET. The contingency stipulated in the event of the tender being made by a debtor of the dues inclusive of the costs, charges, etc., would be that such tender being made before the date fixed for sale or transfer, the SECURED CREDITOR should stop all further steps for effecting the sale or transfer. That apart, no further step should also be taken for transfer or sale.

When we analyze in depth the stipulations contained in the said sub-section (8), we find that there is a valuable right recognized and asserted in favour of the borrower, who is the owner of the SECURED ASSET and who is extended an opportunity to take all efforts to stop the sale or transfer till the last minute before which the said sale or transfer is to be effected. Having regard to such a valuable right of a debtor having been embedded in the said sub-section, it will have to be stated in uncontroverted terms that the said provision has been engrafted in the SARFAESI Act primarily with a view to protect the rights of a

borrower, inasmuch as, such an ownership right is a Constitutional Right protected under Article 300A of the Constitution, which mandates that no person shall be deprived of his property save by authority of law.

Therefore, de hors, the extent of borrowing made and whatever costs, charges were incurred by the SECURED CREDITOR in respect of such borrowings, when it comes to the question of realizing the dues by bringing the property entrusted with the SECURED CREDITOR for sale to realize money advanced without approaching any Court or Tribunal, the SECURED CREDITOR as a TRUSTEE cannot deal with the said property in any manner it likes and can be disposed of only in the manner prescribed in the SARFAESI Act.

Therefore, the creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected in order to provide the required opportunity to the borrower to take all possible steps for retrieving his property or at least ensure that in the process of sale the SECURED ASSET derives the maximum benefit and the SECURED CREDITOR or anyone on its behalf is not allowed to exploit the situation of the borrower by virtue of the proceedings initiated under the SARFAESI Act. More so, under Section 13(1) of the SARFAESI Act, the SECURED CREDITOR is given a free hand to resort to sale of the property without approaching the Court or Tribunal.

27. Therefore, by virtue of the stipulations contained under the provisions of the SARFAESI Act, in particular, Section 13(8), any sale or transfer of a SECURED ASSET, cannot take place without duly informing the borrower of the time and date of such sale or transfer in order to enable the borrower to tender the dues of the SECURED CREDITOR with all costs, charges and expenses and any such sale or transfer effected without complying with the said statutory requirement would be a constitutional violation and nullify the ultimate sale.

28. Once the said legal position is ascertained, the statutory prescription contained in Rules 8 and 9 have also got to be examined as the said rules prescribe as to the procedure to be followed by a SECURED CREDITOR while resorting to a sale after the issuance of the proceedings under Section 13(1) to

(4) of the SARFAESI Act. Under Rule 9(1), it is prescribed that no sale of an immovable property under the rules should take place before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower. Sub-rule (6) of Rule 8 again states that the authorized officer should serve to the borrower a notice of 30 days for the sale of the immovable SECURED ASSETS. Reading sub-rule (6) of Rule 8 and sub-rule (1) of Rule 9 together, the service of individual notice to the borrower, specifying clear 30 days time gap for effecting any sale of immovable SECURED ASSET is a statutory mandate. It is also stipulated that no sale should be effected before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers. Therefore, the requirement under Rule 8(6) and Rule 9(1) contemplates a clear 30 days individual notice to the borrower and also a public notice by way of publication in the newspapers. In other words, while the publication in newspaper should provide for 30 days clear notice, since Rule 9(1) also states that such notice of sale is to be in accordance with proviso to sub-rule (6) of Rule 8, 30 days clear notice to the borrower should also be ensured as stipulated under Rule 8(6) as well. Therefore, the use of the expression 'or' in Rule 9(1) should be read as 'and' as that alone would be in consonance with Section 13(8) of the SARFAESI Act.

29. The other prescriptions contained in the proviso to sub-rule (6) of Rule 8 relates to the details to be set out in the newspaper publication, one of which should be in 'vernacular language' with sufficient circulation in the locality by setting out the terms of the sale. While setting out the terms of the sale, it should contain the description of the immovable property to be sold, the known encumbrances of the SECURED CREDITOR, the secured debt for which the property is to be sold, the reserve price below which the sale cannot be effected, the time and place of public auction or the time after which sale by any other mode would be completed, the deposit of earnest money to be made and any other details which the authorized officer considers material for a purchaser to know in order to judge the nature and value of the property.

30. Such a detailed procedure while resorting to a sale of an immovable SECURED ASSET is prescribed under Rules 8 and 9(1). In our considered opinion, it has got a twin objective to be achieved.

In the first place, as already stated by us, by virtue of the stipulation contained in Section 13(8) read along with Rules 8(6) and 9(1), the owner/ borrower should have clear notice of 30 days before the date and time when the sale or transfer of the SECURED ASSET would be made, as that alone would enable the owner/borrower to take all efforts to retain his or her ownership by tendering the dues of the SECURED CREDITOR before that date and time.

Secondly, when such a SECURED ASSET of an immovable property is brought for sale, the intending purchasers should know the nature of the property, the extent of liability pertaining to the said property, any other encumbrances pertaining to the said property, the minimum price below which one cannot make a bid and the total liability of the borrower to the SECURED CREDITOR. Since, the proviso to sub-rule (6) also mentions that any other material aspect should also be made known when effecting the publication, it would only mean that the intending purchaser should have entire details about the property brought for sale in order to rule out any possibility of the bidders later on to express ignorance about the factors connected with the asset in question.

Be that as it may, the paramount objective is to provide sufficient time and opportunity to the borrower to take all efforts to safeguard his right of ownership either by tendering the dues to the creditor before the date and time of the sale or transfer, or ensure that the SECURED ASSET derives the maximum price and no one is allowed to exploit the vulnerable situation in which the borrower is placed.

31. At this juncture, it will also be worthwhile to refer to Rules 8(1) to (3) and in particular sub-rule (3), in order to note the responsibility of the SECURED CREDITOR vis-à-vis the SECURED ASSET taken possession of. Under sub-rule (1) of Rule 8, the prescribed manner in which the possession is to be taken by issuing the notice in the format in which such notice of possession is to be issued to the borrower is stipulated. Under sub-rule (2) of Rule 8 again, it is stated as to how the SECURED CREDITOR should publish the notice of possession as prescribed under sub-rule (1) to be made in two leading newspapers, one of which should be in the vernacular language having sufficient circulation in the locality and also such publication should have been made seven days prior to the intention of taking possession. Sub-rule (3) of Rule 8 really casts much more onerous responsibility on the SECURED CREDITOR

once possession is actually taken by its authorised officer. Under sub-rule (3) of Rule 8, the property taken possession of by the SECURED CREDITOR should be kept in its custody or in the custody of a person authorized or appointed by it and it is stipulated that such person holding possession should take as much care of the property in its custody as a owner of ordinary prudence would under similar circumstances take care of such property. The underlining purport of such a requirement is to ensure that under no circumstances, the rights of the owner till such right is transferred in the manner known to law is infringed. Merely because the provisions of the SARFAESI Act and the Rules enable the SECURED CREDITOR to take possession of such an immovable property belonging to the owner and also empowers to deal with it by way of sale or transfer for the purpose of realizing the secured debt of the borrower, it does not mean that such wide power can be exercised arbitrarily or whimsically to the utter disadvantage of the borrower.

32. Under sub-rule (4) of Rule 8, it is further stipulated that the authorized officer should take steps for preservation and protection of SECURED ASSETS and INSURE them if necessary till they are sold or otherwise disposed of. Sub-rule (4), governs all SECURED ASSETS, movable or immovable and a further responsibility is created on the authorised officer to take steps for the preservation and protection of SECURED ASSETS and for that purpose can even INSURE such assets, until it is sold or otherwise disposed of. Therefore, a reading of Rules 8 and 9, in particular, sub-rule (1) to (4) and (6) of Rule 8 and sub-rule (1) of Rule 9 makes it clear that simply because a secured interest in a SECURED ASSET is created by the borrower in favour of the SECURED CREDITOR, the said asset in the event of the same having become a NON-PERFORMING ASSET cannot be dealt with in a light-hearted manner by way of sale or transfer or disposed of in a casual manner or by not adhering to the prescriptions contained under the SARFAESI Act and the abovesaid Rules mentioned by us.

33. Having analyzed the relevant statutory prescriptions under the SARFAESI Act, as well as, the Rules, 2002 it will be necessary to refer to the decisions placed before us on the above aspects, before examining the manner in which the sale of the SECURED ASSET of the 1st and 2nd Respondents was dealt with by the 4th Respondent—Bank and by effecting the sale in favour of the Appellant herein.

34. Mr. Shyam Divan, learned Senior Counsel relied upon the decision in Narandas Karsondas (supra), in which the right of a mortgagor as prescribed under Section 60 of the T.P. Act has been spelt out. Under Section 60 of the T.P. Act, at any time after the principal money fell due, there is a right in the mortgagor on payment or tender at a proper time and place of the mortgage money, to require a mortgagee to restore the property to the mortgagor with all rights prescribed as it stood prior to the mortgage. Under the proviso, the only impediment would be that if such a right of a mortgagor stood extinguished by act of the parties or by the decree of a Court. Certain other conditions are also stipulated in the said provision for the mortgagor to seek for redemption of the mortgaged property. Dealing with the said provision, this Court held as under in paragraphs 34 and 35.

Paragraphs 34 and 35 are as under:

"34. The right of redemption which is embodied in Section 60 of the Transfer of Property Act is available to the mortgagor unless it has been extinguished by the act of parties. The combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Indian Registration Act is that a contract for sale in respect of immovable property of the value of more than one hundred rupees without registration cannot extinguish the equity of redemption. In India it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished. The conferment of power to sell without intervention of the Court in a mortgage deed by itself will not deprive the mortgagor of his right to redemption. The extinction of the right of redemption has to be subsequent to the deed conferring such power. The right of redemption is not extinguished at the expiry of the period. The equity of redemption is not extinguished by mere contract for sale.

35. The mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. In England a sale of property takes place by agreement but it is not so in our country. The power to sell shall not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Further Section 69(3) of the Transfer of Property Act shows that when a sale has been made in professed exercise of such a power, the title of the purchaser shall not be

impeachable on the ground that no case had arisen to authorize the sale. Therefore, until the sale is complete by registration the mortgagor does not lose right of redemption."

(emphasis added)

35. On a reading of the above paragraphs, we are able to discern the Ratio to the effect that a mere conferment of power to sell without intervention of the Court in the mortgage deed by itself will not deprive the mortgagor of his right to redemption, that the extinction of the right of redemption has to be subsequent to the deed conferring such power, that the right of redemption is not extinguished at the expiry of the period, that the equity of redemption is not extinguished by mere contract for sale and that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The ratio is also to the effect that the power to sell should not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. The above proposition of law of course was laid down by this Court while construing Section 60 of the T.P. Act. But as rightly contended by Mr. Shyam Divan, we fail to note any distinction to be drawn while applying the abovesaid principles, even in respect of the sale of SECURED ASSETS created by way of a secured interest in favour of the SECURED CREDITOR under the provisions of the SARFAESI Act, read along with the relevant Rules. We say so, inasmuch as, we find that even while setting out the principles in respect of the redemption of a mortgage by applying Section 60 of the T.P. Act, this Court has envisaged the situation where such mortgage deed providing for resorting to the sale of the mortgage property without the intervention of the Court. Keeping the said situation in mind, it was held that the right of redemption will not get extinguished merely at the expiry of the period mentioned in the mortgage deed. It was also stated that the equity of redemption is not extinguished by mere contract for sale and the most important and vital principle stated was that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The completion of sale, it is stated, can be held to be so unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Therefore, it was held that until the sale is complete by registration of sale, the mortgagor does not lose the right of redemption. It was

also made clear that it was erroneous to suggest that the mortgagee would be acting as the agent of the mortgagor in selling the property.

36. When we apply the above principles stated with reference to Section 60 of the T.P. Act in respect of a secured interest in a SECURED ASSET in favour of the SECURED CREDITOR under the provisions of the SARFAESI Act and the relevant Rules applicable, under Section 13(1), a free hand is given to a SECURED CREDITOR to resort to a sale without the intervention of the Court or Tribunal. However, under Section 13(8), it is clearly stipulated that the mortgagor, i.e. the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the SECURED CREDITOR at any time before the date fixed for sale or transfer. Under sub-section (8) of Section 13, as noted earlier, the SECURED ASSET should not be sold or transferred by the SECURED CREDITOR when such tender is made by the borrower at the last moment before the sale or transfer. The said sub-section also states that no further step should be taken by the SECURED CREDITOR for transfer or sale of the SECURED ASSET. We find no reason to state that the principles laid down with reference to Section 60 of the T.P. Act, which is general in nature in respect of all mortgages, can have no application in respect of a secured interest in a SECURED ASSET created in favour of a SECURED CREDITOR, as all the above-stated principles apply in all fours in respect of a transaction as between the debtor and SECURED CREDITOR under the provisions of the SARFAESI Act.

37. Reliance was also placed upon the decision in MardiaChemicals Ltd. and others v. Union of India & others ((2004) 4 SCC 311). In paragraph 54, while dealing with the contention raised on behalf of the SECURED CREDITOR that the right of redemption would be available to the mortgagor only if the amount due according to the SECURED CREDITOR is deposited, this Court held as under:

‘54……Shri Sibal, however, submits that it is the amount due according to the secured creditor which shall have to be deposited to redeem the property. May be so, some difference regarding the amount due may be there but it cannot be said that right of redemption of property is completely lost. In cases where no such dispute is there, the right can be exercised and in other cases the question of difference in amount may be kept open and got decided before sale of property.”

(underlying is ours)

38. Here again we find that even if there were some difference in the amount tendered by the borrower while exercising his right of redemption under Section 13(8), the question of difference in the amount should be kept open and can be decided subsequently, but on that score the right of redemption of the mortgagor cannot be frustrated. Elaborating the statement of law made therein, we wish to state that the endeavour or the role of a SECURED CREDITOR in such a situation while resorting to any sale for the realization of dues of a mortgaged asset, should be that the mortgagor is entitled for some lenience, if not more to be shown, to enable the borrower to tender the amounts due in order to ensure that the Constitutional Right to property is preserved, rather than it being deprived of.

39. In Ram Kishun's case (supra), paragraphs 13, 14 and 28 are relevant for our purpose, which are as under:

"13. Undoubtedly, public money should be recovered and recovery should be made expeditiously. But it does not mean that the financial institutions which are concerned only with the recovery of their loans, may be permitted to behave like property dealers and be permitted further to dispose of the secured assets in any unreasonable or arbitrary manner in flagrant violation of the statutory provisions.

14. A right to hold property is a constitutional right as well as a human right. A person cannot be deprived of his property except in accordance with the provisions of a statute. (Vide LachhmanDass v. Jagat Ram and State of M.P. v. Narmada Bachao Andolan). Thus, the condition precedent for taking away someone's property or disposing of the secured assets, is that the authority must ensure compliance with the statutory provisions.

28. In view of the above, the law can be summarized to the effect that the recovery of the public dues must be made strictly in accordance with the

procedure prescribed by law. The liability of a surety is coextensive with that of the principal debtor. In case there are more than one surety the liability is to be divided equally among the sureties for unpaid amount of loan. Once the sale has been confirmed it cannot be set aside unless a fundamental procedural error has occurred or sale certificate had been obtained by misrepresentation or fraud."

(emphasis added)

40. The above principles laid down by this Court also makes it clear that though the recovery of public dues should be made expeditiously, it should be in accordance with the procedure prescribed by law and that it should not frustrate a Constitutional Right, as well as the Human Right of a person to hold a property and that in the event of a fundamental procedural error occurred in a sale, the same can be set aside.

41. Before taking up the facts of the case on hand, it is necessary to refer to certain other provisions referred to and relied upon by Mr. Shyam Divan, learned Senior Counsel appearing for the 8th Respondent.

The learned Senior Counsel referred to Section 37 of the SARFAESI Act, Section 29 of the RDDB Act and Rule 15 of the Income Tax Rules, 1962. The said provisions have to be noted in detail and therefore, the same are extracted hereunder:

"Section 37 - Application of other laws not barred.-The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.

Section 29 - Application of certain provisions of Income Tax Act.-The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961), and the Income-tax (Certificate Proceedings) Rules, 1962, as in force

from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income-tax:

Provided that any reference under the said provisions and the rules to the assessee shall be construed as a reference to the defendant under this Act.

Sch. II Part I Rule 15 - Adjournment or Stoppage of Sale-(1) The Tax Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the office of the Tax Recovery Officer, no such adjournment shall be made without the leave of the Tax Recovery Officer.

(2) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such arrears and costs has been paid to the Tax Recovery Officer who ordered the sale."

42. A close reading of Section 37 shows that the provisions of the SARFAESI Act or the rules framed thereunder will be in addition to the provisions of the RDDB Act. Section 35 of the SARFAESI Act states that the provisions of the SARFAESI Act will have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. Therefore, reading Sections 35 and 37 together, it will have to be held that in the event of any of the provisions of RDDB Act not being inconsistent with the provisions of the SARFAESI Act, the application of both the Acts, namely, SARFAESI

Act and RDDB Act, would be complementary to each other. In this context reliance can be placed upon the decision in Transcorev. Union of India and another reported in ((2008) 1 SCC 125). In paragraph 64 it is stated as under after referring to Section 37 of the SARFAESI Act.

"……According to American Jurisprudence, 2d, Vol. 25, p. 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Principles of Equity (31st Edn., p. 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application."

(Emphasis added)

43. A reading of Section 37 discloses that the application of SARFAESI Act will be in addition to and not in derogation of the provisions of the RDDB Act. In other words, it will not in any way nullify or annul or impair the effect of the provisions of the RDDB Act. We are also fortified by our above statement of law as the HEADING of the said Section also makes the position clear that application of other laws are not barred. The effect of Section 37 would, therefore, be that in addition to the provisions contained under the SARFAESI Act, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in Section 37, namely, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Finances Institutions Act, 1993, or any other law for the time being in force. On this aspect, it would be apposite to refer to a principle set down in Eastern Counties etc. Railway v. Marriage reported in ((1861) 9 HLC 32), as stated in Craies on Statute Law, Seventh Edition, p. 207.

The proposition of law as regards the HEADINGS of a provision has been succinctly stated as under:

"These various headings", "are not to be treated as if they were marginal notes, or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording as it appears to me a better key to the constructions of the sections which follow them than might be afforded by the mere preamble."

(Emphasis added)

44. We can also rely upon a similar principle declared by this Court by His Lordship Justice Subba Rao, as His Lordship then was, speaking for the Bench in Bhinkaand others v. Charan Singh reported in (AIR 1959 SC 960). In paragraph 15, the learned Judge after referring to the HEADING of Section 180 of the UP Tenancy Act, (17 of 1939) held as under. The heading reads thus:

"Ejectment of person occupying land without Title."

"Maxwell on Interpretation of Statutes", 10th Edn., gives the scope of the user of such a heading in the interpretation of a section thus, at p. 50:

"The headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words".

45. Reference to the above principles laid down in the various decisions also supports our conclusion that the application of the SARFAESI Act will be in addition to, in the present case to Section 29 of the RDDB Act. Once we steer clear of the said position without any hesitation, it can be held that whatever stipulations contained in Section 29 as regards the application of certain provisions of the Income Tax Act, 1961 in particular Schedule 2 Part 1 Rule 15 of the Income Tax Rules, 1962 for effecting a sale or transfer would apply automatically. We have already extracted Section 29 of the RDDB Act, as well as Schedule 2 Part 1 Rule 15 of the Income Tax Rules, 1962. Therefore, what is

to be considered is as to what is the mode prescribed under the above provisions, namely, Rule 15 prescribed under Schedule 2 Part 1 of the Income Tax Rules, 1962.

46. Section 29 of the RDDB Act is an enabling provision under which the Second and Third schedule to the Income Tax Act, 1961 (43 of 1961) and the Income Tax Rules, 1962 can be applied as far as possible with necessary modifications as if the provisions and the rules are referable to the DEBT DUE, instead of the income tax due. Therefore, fictionally, by virtue of Section 29 of the RDDB Act, the mode and method by which a recovery of income tax can be resorted to under the Second and Third Schedule to the Income Tax Act and the Income Tax Rules, 1962 have to be followed. Therefore, a reading of Section 37 of the SARFAESI Act and Section 29 of the RDDB Act, the only aspect which has to be taken care of is that while applying the procedure prescribed under Rule 15 of the Income Tax Rules, 1962, no conflict with reference to any of the provisions of the SARFAESI Act, takes place.

47. Mr. Shyam Divan, learned Senior Counsel, also referred to Order XXI Rules 64 to 69 of the Civil Procedure Code in support of his submission that by virtue of Section 37 of SARFAESI Act, as it states that the provisions of SARFAESI Act will be in addition to and not in derogation of any other law for the time being in force apart from Companies Act, RDDB Act etc., the provisions contained in CPC can also be impaired to support the stand of the Respondents 1 and 2. Since we have held that by applying Section 37 of SARFAESI Act, read along with Section 29 of the RDDB Act, the requirement of the statutory prescription under Section 13(8) read along with Rule 8 and 9(1) of the Security Interest Rule would be sufficiently supported, we do not find any necessity to delve into the submission made by referring to Rules 64 to 69 of Order XXI CPC.

48. Keeping the said basic principle in applying the above provisions in mind, when we refer to Rule 15 of the Income Tax Rules, 1962, in the first place it will have to be stated that a reading of the said rule does not in any way conflict with either Section 13(8) of the SARFAESI Act or Rules 8 and 9 of the Rules, 2002. As far as sub-rule (1) of Rule 15 is concerned, it only deals with the discretion of the Tax Recovery Officer to adjourn the sale by recording his reasons for such adjournment. The said Rule does not in any way conflict with

either Rules 8 or 9 or Section 13, in particular sub-section (1) or sub-section (8) of the SARFAESI Act. Therefore, to that extent there is no difficulty in applying Rule 15. As far as sub-rule (2) is concerned, the same is clear to the effect that a sale of immovable property once adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale should be made unless the defaulter consents to waive it. The said sub-rule also does not conflict with any of the provisions of the SARFAESI Act, in particular Section 13 or Rules 8 and 9. In fact there is no provision relating to grant of adjournment or issuance of a fresh proclamation for effecting the sale after the earlier date of sale was not adhered to in the SARFAESI Act. In such circumstances going by the prescription contained in Section 37 of the SARFAESI Act, as we have reached a conclusion that the provision contained in Section 29 of the RDDB Act will be in addition to and not in derogation of the provisions of the SARFAESI Act, the provisions contained in Rule 15, which is applicable by virtue of the stipulation contained in Section 29 of the RDDB Act, whatever stated in sub-rule (2) of Rule 15 should be followed in a situation where a notice of sale notified as per Rules 8 and 9(1) of the Securitisation Trust Rules, read along with Section 13(8) gets postponed. In our considered view such a construction of the provisions, namely, Sections 37, 13(8) and 37 of the SARFAESI Act, read along with Section 29 with the aid of Rule 15 could alone be made and in no other manner.

49. We, therefore, hold that unless and until a clear 30 days notice is given to the borrower, no sale or transfer can be resorted to by a SECURED CREDITOR. In the event of any such sale properly notified after giving 30 days clear notice to the borrower did not take place as scheduled for reasons which cannot be solely attributable to the borrower, the SECURED CREDITOR cannot effect the sale or transfer of the SECURED ASSET on any subsequent date by relying upon the notification issued earlier. In other words, once the sale does not take place pursuant to a notice issued under Rules 8 and 9, read along with Section 13(8) for which the entire blame cannot be thrown on the borrower, it is imperative that for effecting the sale, the procedure prescribed above will have to be followed afresh, as the notice issued earlier would lapse. In that respect, the only other provision to be noted is sub-rule (8) of Rule 8 as per which sale by any method other than public auction or public tender can be on such terms as may be settled between the parties in writing. As far as sub-rule (8) is concerned, the parties referred to can only relate to the SECURED CREDITOR and the borrower. It is therefore, imperative that for the sale to be effected under Section 13(8), the procedure prescribed under Rule 8 read along

with 9(1) has to be necessarily followed, inasmuch as that is the prescription of the law for effecting the sale as has been explained in detail by us in the earlier paragraphs by referring to Sections 13(1), 13(8) and 37, read along with Section 29 and Rule 15. In our considered view any other construction will be doing violence to the provisions of the SARFAESI Act, in particular Section 13(1) and (8) of the said Act.

50. Having pronounced the legal position as above, when we refer to the facts of the present case, the initial sale was notified to take place on 25-9-2007. The paper publication was made on 23-8-2007. Therefore, applying Rule 9(1) read along with the proviso to sub-rule (6) of Rule 8, there can be no quarrel as to the procedure followed in effecting the publication for resorting to sale on 25-9-2007. When it comes to the question of the intimation to the borrower as required under sub-rule (6) of Rule 8, we find that admittedly Respondents 1 and 2 were informed by the 4th Respondent—Bank only on 30-8-2007. Therefore, as the sale date was 25-9-2007 it did not fulfill the mandatory requirement of 30 clear days notice to the borrower as stipulated under sub-rule (6) of Rule 8. In fact, on this score itself it can be held that if the sale had been effected on 25-9-2007, it would not have been in accordance with Section 13(8) of the SARFAESI Act, read along with Rules 8 and 9(1). But at the intervention of the Court, namely, the orders passed in Writ Petition 27182 of 2007 dated 20-9-2007, the sale date fixed on 25-9-2007 was adjourned by six weeks. In any case, the sale was not effected even after the six weeks period expired as directed in the said Order dated 20-9-2007. The Securitisation Application No. 20 of 2007, came to be disposed of by the DRT only on 27-12-2007.

51. Therefore, once the Securitisation Application of the borrowers, namely, Respondents 1 and 2 was dismissed on 27-12-2007, even assuming that there was no impediment for the SECURED CREDITOR, namely, the 4th Respondent—Bank to resort to sale under the provisions of the SARFAESI Act, as held by us in the earlier paragraphs, there should have been a fresh notice issued in accordance with Rules 8(6) and 9(1) of the Rules, 2002. Unfortunately, the 4th Respondent—Bank stated to have effected the sale on 28-12-2007 by accepting the tender of the Appellant and by way of further process, directed the Appellant to deposit the 25% of the amount on that very day and also directed to deposit the balance amount within 15 days, which was deposited by the Appellant on 11-1-2008. In fact, after the deposit of the 25% of the amount on 28-12-2007, the 4th Respondent—Bank stated to have confirmed

the sale in favour of the Appellant on 31-12-2007. After the deposit of the balance amount on 11-1-2008 by communication dated 2-2-2008, the 4th Respondent—Bank informed the 1st and 2nd Respondents about the confirmation of sale and thereby, provided no scope for Respondents 1 and 2 to tender the dues of the SECURED CREDITOR, namely, the 4th Respondent—Bank with all charges, expenses etc., as has been provided under Section 13(8) of the SARFAESI Act. Therefore, the whole procedure followed by the 4th Respondent—Bank in effecting the sale on 28-12-2007 and the ultimate confirmation of the sale on 11-1-2008, stood vitiated as the same was not in conformity with the provisions of the SARFAESI Act and the Rules framed thereunder. Though, such a detailed consideration of the legal issues was not made by the Division Bench while setting aside the sale effected in favour of the Appellant, having regard to the construction of the provisions of the SARFAESI Act, the RDDB Act and the relevant Rules, we are convinced that the Judgment of the Division Bench dated 8-3-2010, passed in Writ Appeal 1555 of 2009, was perfectly justified and we do not find any infirmity with the same.

52. We now take up for consideration the correctness of the Order of the Division bench dated 18-6-2010 in I.A. 437 of 2010 in Writ Appeal 1555 of 2009 and the order dated 8-7-2010 in I.A. 507 of 2010 in Writ Appeal 1555 of 2009. Though we have held that the Judgment of the Division Bench in Writ Appeal 1555 of 2009 cannot be found fault with, when we examined the subsequent Orders dated 18-6-2010 and 8-7-2010 in I.A. 437 of 2010 and I.A. 507 of 2010, we are of the view that in the peculiar facts of this case and the ultimate directions issued by the Division Bench in its main Judgment of 8-3-2010 in Writ Appeal 1555 of 2009, the said Orders could not have been validly issued.

53. In the foremost, it will have to be noted that the Division Bench of the High Court while allowing the Writ Appeal in its order dated 8-3-2010, held as under:

"(i) The sale by the Bank of the appellant's property in favour of the fifth respondent will stand set aside and the sale deed shall stand invalidated on condition that appellant gives a DD for Rs. 2 crores from a local Branch of a Nationalised Bank in favour of the fifth respondent and the same will be handed over to him within two months from now. If payment is not made as above, sale

in favour of the fifth respondent will stand confirmed and Writ Appeal will stand dismissed.

(ii) If appellant makes payment as above, and sale gets cancelled by operation of judgment, then on giving DD the fifth respondent will hand over original sale deed obtained by him from the Bank to the appellant for the appellant to produce before the Sub Registry and revenue authorities for cancellation of registration, mutation, if any effected, and for restoration of property in the records of the Sub Registry and revenue authorities in favour of the appellant.

(iii) The Bank will remit the excess amount available with them to the Tax Recovery Officer in pursuance to the demand to be credited in the account of the appellant, and it is for the appellant to claim refund, if eligible for him.

(iv) We leave it open to the appellant to claim refund of stamp duty, if refund is eligible. However, we make it clear that in view of the above judgment, if there is eligibility for refund of stamp duty, the same should be the appellant."

54. In the High Court, the Appellant herein was arrayed as the 5th Respondent. The Division Bench taking into account the amount remitted by the Appellant, namely, Rs. 1,27,00,101/- and the stamp duty and registration charges of Rs. 23,00,000/- in all Rs. 1,50,00,101/- directed Respondents 1 and 2 to pay a lump sum of Rs. 2,00,00,000/- to the Appellant for cancelling the sale. The amount of Rs. 2,00,00,000/- was arrived at taking into account the rate of interest at 18% per annum and the stamp duty and registration charges spent by the Appellant. However, the direction number (i) made it clear that while the sale in favour of the Appellant would stand set aside and invalidated on a condition that Respondents 2 and 3 forwarded a Demand Draft of Rs. 2,00,00,000/- from a local branch of a Nationalised Bank in favour of the Appellant by handing it over to him within 2 months from the date of the Order, namely, 8-3-2010, made it tacitly clear that if the payment was not made as directed, the sale in favour of the Appellant would stand confirmed and the writ appeal would stand dismissed. Therefore, subject to the compliance of the directions contained in sub-para (i) of paragraph 5, the cancellation of the sale in favour of the

Appellant was ordered. Under sub-para (ii) of paragraph 5, once the sale gets cancelled by virtue of the operation of the Judgment, namely, by handing over the Demand Draft in favour of the Appellant, the original sale deed obtained by the Appellant was directed to be produced before the Sub-Registrar and other Revenue Authorities for the cancellation of registration/mutation etc. On such compliance of the said direction contained in sub-para (ii), the restoration of the property in the records of the sub-registry and revenue authorities were also directed to be effected in favour of Respondents 1 and 2. Under sub-para (iii) of paragraph 5, the 4th Respondent—Bank was directed to remit the excess amount available with it, i.e. over and above the dues to the bank to the Tax Recovery Officer, in pursuance to their demand by crediting into the account of Respondents 1 and 2, with further liberty to Respondents 1 and 2 to claim for refund if they were eligible. Liberty was also given to Respondents 1 and 2 to claim refund of stamp duty if eligible.

55. The said period of two months stipulated in sub-para (i) of paragraph 5 expired by 8-5-2010. It was pointed out to us by Mr. Krishnan, learned Senior Counsel for the Appellant that the very application seeking further six weeks time from 8-5-2010 for giving the Demand Draft of Rs. 2,00,00,000/- to the Appellant as per the Judgment dated 8-3-2010, was filed only on 10-6-2010 and that the Division Bench thereafter passed the present Order dated 18-6-2010 in I.A. 437, i.e. more than a month after the expiry of the initial two months period, namely, 8-5-2010. Before adverting to the details of the Order dated 18-6-2010 passed in I.A. 437 of 2010, at the very outset it will have to be stated that having regard to the specific direction contained in sub-para (i) and (ii) of para 5 of the Judgment dated 8-3-2010 in Writ Appeal 1555 of 2009, by 8-5-2010, when Respondents 1 and 2 failed to hand over the Demand Draft of Rs. 2,00,00,000/-, as directed by the Division Bench to the Appellant, the Writ Appeal stood dismissed without any further reference to anyone, even to the Court. In fact, since the application for extension, namely, I.A. 437 of 2010 came to be filed only on 10-6-2010, it should be held that there was no right in Respondents 1 and 2 or for the 8th Respondent herein to seek for any further indulgence before the Division Bench for further extension of time. It is relevant to note that the two months period expired on 8-5-2010. Thereafter, Respondents 1 and 2 took their own time to file the application for extension, namely, after more than 30 days, by which time the writ appeal stood dismissed and there was no right available with Respondents 1 and 2 or with the 8th Respondent herein to seek for any relief for claiming any right in favour of the

8th Respondent, much less for cancellation of the sale already effected in favour of the Appellant herein.

56. When we refer to the said order dated 18-6-2010 to examine the reasons which weighed with the Division Bench, we find that the sum and substance of the grievance expressed on behalf of Respondents 1 and 2 herein was that they had to raise funds by arranging for the sale of the very same SECURED ASSET, which took time as many buyers were reluctant to come forward because of the chance of continued litigation. By making reference to the stand of Respondents 1 and 2, the Division Bench without anything more, accepted the said reason and by allowing the I.A. permitted the 8th Respondent herein to deposit Rs. 2,03,00,000/- by 19-6-2001 and on such deposit it held that the time granted for payment in terms of the Judgment dated 8-3-2010, stood extended till 20-6-2010. It further held that on such deposit being made, the sale made by the 4th Respondent—Bank in favour of the Appellant would be cancelled and the 4th Respondent should effect a sale in favour of the 8th Respondent herein. The other directions contained in sub-para (iv) of para 5 was maintained. In the subsequent I.A. 507 of 2010 the Division Bench directed the 4th Respondent—Bank to execute the sale in favour of the 8th Respondent herein, taking note of the fact of deposit of Rs. 2,03,00,000/- by the 8th Respondent with the 4th Respondent—Bank.

57. Be that as it may, after the Order dated 18-6-2010 and 8-7-2010, the Appellant filed the Special Leave Petition in this Court on 26-7-2010 and the Special Leave Petition came up for orders on 30-7-2010. While directing the Registry to list the SLP on the notified date, the parties were directed to maintain status quo with regard to the impugned order of the High Court dated 8-3-2010 till then. Thereafter, on 9-8-2010, service of notice on the Respondent was dispensed with since a caveat was entered on behalf of the 1st and 8th Respondents. While granting time for filing counter affidavit, as well as rejoinder, the Interim Order dated 30-7-2010, was directed to be continued. Vide Order dated 8-8-2013, while declining to vacate Status Quo Order dated 30-7-2010, the Special Leave Petition itself was directed to be listed for final hearing. Though the 8th Respondent is stated to have deposited the sum of Rs. 2,03,00,000/- with the 4th Respondent—Bank, as per the Order dated 18-6-2010 in IA No. 437 of 2010, the other directions in the main Order dated 8-3-2010 in Writ Appeal No. 1555 of 2009 and the subsequent directions contained in the Orders dated 18-6-2010 and 8-7-2010, were not carried out. The sale which was

already fixed in favour of the Appellant continued to remain in force and the sum of Rs. 2,03,00,000/- deposited by the 8th Respondent remains with the 4th Respondent—Bank.

58. In the light of our conclusion that the Judgment passed in Writ Appeal No. 1555 of 2009 dated 8-3-2010, was a self contained one and due to the failure of the 1st and 2nd Respondents in not handing over the Demand Draft for Rs. 2,00,00,000/- to the Appellant within the stipulated time limit, namely, on or before 8-6-2010, the sale effected in favour of the Appellant stood confirmed. Inasmuch as we have found there was absolutely no justifiable grounds for the Division Bench to grant further time in its Order dated 18-6-2010, we are of the view that it will be travesty of justice if the earlier Judgment dated 8-3-2010, which worked itself out on 8-5-2010, is to be reversed for the flimsy grounds raised by the 1st and 2nd Respondents that they could not raise funds in spite of two months time granted to them for paying a sum of Rs. 2,00,00,000/- in favour of the Appellant. We have also found that while the time granted by the Division Bench expired by 8-5-2010, the application for extension was filed 40 days later, i.e. on 10-6-2010. Therefore, for such a recalcitrant attitude displayed by Respondents 1 and 2 in respect of a litigation which involved very high stakes, the Division Bench should not have come for their rescue in the absence of any weighty reasons. The reason adduced on behalf of Respondents 1 and 2 is the standard reason which any party used to plead while seeking for extension of time. Since very valuable rights of the Appellant were at stakes and the Order of the Division Bench also remained in force, in so far as it related to the cancellation of the sale deed, which existed in favour of the Appellant till 8-5-2010 and by virtue of the non-compliance of the conditions imposed in the said Judgment dated 8-3-2010 by the 1st and 2nd Respondents the ownership rights of the Appellant got crystallized on and after 9-5-2010, we fail to find any justification at all for the Division Bench to interfere with the said right in such a casual manner by accepting the flimsy reasons of the 1st and 2nd Respondents. At the risk of repetition it will have to be stated that the ownership right which got crystallized in favour of the Appellant as on 9-5-2010, could not have been snatched away by the Division Bench by passing the present impugned order dated 18-6-2010 and 8-7-2010. Whatever stated by us with reference to the right of ownership of 1st and 2nd respondents with reliance upon Article 300A of the Constitution would equally apply to the Appellant as well in such a situation. Therefore, such a right which accrued in favour of the Appellant ought not to have been interfered with by the Division Bench and the Orders passed in the interim application filed at the instance of the 1st and 2nd

Respondents, along with the 8th Respondent herein are not justified. Therefore, while upholding the Judgment of the Division Bench dated 8-3-2010 passed in Writ Appeal 1555 of 2009, for the reasons stated herein, the Orders dated 18-6-2010 and 8-7-2010 passed in I.A. Nos. 437 and 507 of 2010 are set aside.

59. Though we have found good grounds in favour of the Appellant to set at naught the above Orders passed in I.A. Nos. 437 and 507 of 2010, we cannot also ignore one other very relevant factor, namely, that the value of the property which was knocked out in favour of the Appellant in a sum of Rs. 1,27,00,101/- by confirming the sale by the 4th Respondent—Bank on 31-12-2007 and 11-1-2008, the same was found to be note in accordance with the provisions of the SARFAESI Act. Since the proper procedure for effecting the sale was not followed, it will have to be held that the price fetched through the Appellant cannot be held to be the correct price for the mortgaged property involved in these proceedings. Further, the very fact that in the year 2010 the property could fetch Rs. 2,03,00,000/-, we are of the view that in all fairness even while confirming the Order of the Division Bench, by which the sale in favour of the Appellant came to be confirmed, the difference in the sale price should be directed to be paid by the Appellant. While the price paid by the Appellant was Rs. 1,27,00,101/-, the price ultimately fetched at the instance of the 1st and 2nd Respondents was Rs. 2,03,00,000/-. Therefore, after giving credit to Rs. 1,27,00,000/-, the Appellant would still be liable to pay a further sum of Rs. 76,00,000/- to the 1st and 2nd Respondents.

60. Accordingly, while disposing of these appeals as directed above, we pass the following Order:

(A) The 4th Respondent—Bank shall refund a sum of Rs. 2,03,00,000/- deposited by the 8th Respondent, along with 18% interest. Such refund shall be made by the 4th Respondent to the 8th Respondent by way of Bank's Pay Order within two weeks from the date of production of copy of this Order.

(B) The 4th Respondent—Bank having adjusted its due from and out of the sale consideration paid by the Appellant, shall pay the balance amount to the Tax Recovery Officer pursuant to the demand, which is to be credited in the account of the Appellant. Such deposit shall also be made along with accrued interest @ 18% per annum while making the deposit. It is for the Respondents 1 and 2 to

claim refund if they are eligible for the same by approaching the concerned Authority under the Income Tax Act and in the manner known to Law.

(C) The Appellant shall deposit the balance sale consideration determined by us in a sum of Rs. 76,00,000/- with the 4th Respondent—Bank, which shall be kept in an interest bearing account. If there is any further demand by way of tax recovery, it would be open for the Tax Recovery Officer concerned to raise such a demand and forward it to the 4th Respondent—Bank and on such demand being made, the 4th Respondent—Bank shall deposit the same to the credit of the Tax Recovery Officer in the name of the 1st and 2nd Respondents and it will be for the 1st and 2nd Respondents to claim for refund if eligible. If there is no tax due, the 4th Respondent—Bank shall release the said sum of Rs. 76,00,000/- forthwith on deposit being made by the Appellant to Respondents 1 and 2.

(D) Such deposit of Rs. 76,00,000/- shall be made by the Appellant within four weeks from the date of receipt of the copy of this Judgment. As and when the Appellant deposit the sum of Rs. 76,00,000/- towards the sale price of the property transferred in its favour, necessary receipt for the said payment by way of additional sale price shall be executed by the 4th Respondent—Bank along with the 1st and 2nd Respondents and whatever stamp duty and registration charges payable for that purpose shall be borne by the Appellant.

(E) If the Appellant fails to deposit the balance sale consideration of Rs. 76,00,000/- within the stipulated time limit, as directed in paragraph 60(D), the sale already effected by the 4th Respondent—Bank shall stand cancelled automatically without any further reference to this Court. Eventually, the sale consideration deposited by the Appellant with the 4th Respondent—Bank shall be refunded to him after deducting the amount due and payable by the borrower as on the date of previous sale i.e. 31-12-2007 and the balance amount alone shall be refunded to the Appellant. Further the 4th Respondent—Bank shall bring the property for auction afresh, following the provisions of the SARFAESI Act. Thereafter, from and out of the money realized from the said sale, the 4th Respondent—Bank shall refund the amount retained by it towards the amounts due from the borrower to the Appellant. After paying the said amount to the Appellant, it shall arrange for refund of the balance amount to the 1st and 2nd Respondents after meeting whatever tax liability to the Income Tax

Department or any other statutory dues for which any demand was already raised and pending with the 4th Respondent—Bank.

61. With the above directions, appeal filed against the Judgment dated 8-3-2010 passed in Writ Appeal No. 1555 of 2009 stands dismissed and appeals filed against the Orders dated 18-6-2010 and 8-7-2010, passed in I.A. Nos. 437 of 2010 and 507 of 2010 in Writ Appeal No. 1555 of 2009 stand allowed. No costs.