Comp Sec

OFFICE OF THE DISTRICT JUDGE, PRAYAGRAJ.

ADMIN. ORDER NO. 728 **Dated : Nov. 14 , 2025**

ORDER

While enclosing a pdf copy of judgment/order dt. **22.09.2025** passed by **Hon'ble Supreme Court** in Civil Appeal No. 12174 of 2025 (Arising out of Special Leave Petition (Civil) No. 11068 of 2023), titled M. Rajendran & Ors.Vs. M/S KPK Oils and Protiens India Pvt Ltd & Ors with Civil Appeal No. 12175 of 2025 (SLP (Civil No. 14696 of 2023], vide **Hon'ble High Court's Letter No. 14680/Admin G-II, Dt. 13.11.2025**, it has been communicated that during the course of hearing of the aforementioned case, Hon'ble Supreme Court has analysed the legislative history and schemes of 'Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act' (SARFAESI Act) related to right to pay off the debt and reclaim the mortgaged property under the amended section 13(8) (post 2016 amendment). In view of the above, direction to circulate the same amongst all the Judicial Officers working under supervision and administrative control of undersigned for information, has been provided.

II. In compliance of Hon'ble Court's above directions, following order is being passed with immediate effect:

(a) The System Officer is directed to provide a soft/pdf copy order/ judgement dt. **22.09.2025** passed by **Hon'ble Supreme Court** in the aforementioned case along with a soft/pdf copy of Hon'ble Court's Letter No. **14680/Admin G-II, Dt. 13.11.2025** to all the Judicial Officers working under supervision and administrative control of undersigned for information & ensuring strict compliance in letter & spirit.

(b) A hard-copy of copy of aforesaid judgement dt. **22.09.2025** passed by **Hon'ble Supreme Court** in the aforementioned case along with a soft/pdf copy of Hon'ble Court's Letter No. **14680/ Admin G-II, Dt. 13.11.2025** be circulated among all the Judicial Officers working under supervision and administrative control of undersigned for information & ensuring strict compliance in letter & spirit.

(c) In compliance of order/judgement dt.**12.08.2025** passed by **Hon'ble High Court** in **Crl. Misc. Application u/s 528 BNSS No. 6400 of 2025 titled Smt. Bacchi Devi Vs State of UP And Another**, a meeting of all the working under supervision and administrative control of undersigned is convened on **17.11.2025** at **4.35 PM**, in the **Meeting Hall,** situated at the II-Floor of Newly constructed 24-Court Room Building of District Court Prayagraj for discussion and deliberation regarding compliance of judgment/order dt.**22.09.2025** passed by **Hon'ble Supreme Court** in the aforesaid case. All the Judicial Officers of the Judgeship are directed to participate in the said meeting.

Inform all concerned for strict compliance.

14-11-2025

(**Satya Prakash Tripathi**)
District & Sessions Judge
Prayagraj.

Dated : November 14, 2025

HIGH COURT AT ALLAHABAD

Through Email

From,

Manjeet Singh Sheoran, H.J.S
Registrar General
High Court of Judicature at,
Allahabad

To,

All the District and Sessions Judges/OSD
All the Principal Judges, Family Courts
All the Presiding Officers of Commercial Courts, MACTs & LARRAs
State of Uttar Pradesh

No. 14680 **/Admin G-II** **Dated** 13/11 **/2025**

Sub: Circulation of judgment/order dated **22.09.2025** passed by Hon'ble Supreme Court in **Civil Appeal No. 12174 of 2025 (Arising out of Special Leave Petition (Civil) No. 11068 of 2023)**, titled ***M. Rajendran & Ors.Vs. M/S KPK Oils and Protiens India Pvt Ltd & Ors with Civil Appeal No. 12175 of 2025 [SLP (Civil No. 14696 of 2023]***

Madam/Sir,

During the course of hearing of the aforementioned case, Hon'ble Supreme Court has analysed the legislative history and schemes of '**Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act' (SARFAESI Act)** related to right to pay off the debt and reclaim the mortgaged property under the amended **section 13(8)** (post 2016 amendment).

In this regard, I am directed by the Hon'ble Court to send a copy **(pdf enclosed)** of the instant judgment dated **22.09.2025** to your goodself with the request to circulate the same amongst all the Judicial Officers working under your kind supervision and Administrative control for information.

With regards,

Encl:- As above

Yours faithfully,

11.11.25

Registrar General

Through E-mail

From,

Rajeev Bharti, HJS
Registrar General
High Court of Judicature at
Allahabad

To,

All the District and Sessions Judges/OSD
All the Principal Judges, Family Courts
All the Presiding Officers of MACTs, LARRAs and Commercial Courts
State of Uttar Pradesh

No. 2305 **/Admin. G-II** **Dated:** 22/02/**2025**

Sub: Compliance of order dated 17.12.2024 passed by Hon'ble Supreme Court in Civil Appeal No. 14604 of 2024, Rajendra Kumar Barjatya And Another V/s U.P. Avas evam Vikas Parishad with Civil Appeal No. 14605 of 2024, Rajeev Gupta And Others Vs U.P. Avas Evam Vikas Parishad & Ors.

Madam/Sir,

During the course of hearing aforesaid Civil Appeal, Hon'ble Supreme Court vide judgment dated 17.12.2024 **(pdf copy enclosed)**, has considered the matter of regularization and demolition of unauthorized constructions and observed that ***construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy.***

At last, Hon'ble Supreme Court has issued certain directions in addition to the directives issued vide order dated **13.11.2024** passed in **IN RE: DIRECTIONS IN THE MATTER OF DEMOLITION OF STRUCTURES** communicated vide this Court's letter no. **16840/Admin G-II dated 11.12.2024 (pdf copy enclosed).**

In this regard, I am directed by Hon'ble Court to send pdf copy of order/ judgment dated **17.12.2024** passed by Hon'ble Supreme Court to you for onward circulation of the same amongst all the Judicial Officers of your judgeship for their information and necessary compliance.

Encl. As above

Yours faithfully,

19/02/25

Registrar General

No. **/Admin. G-II** **Dated:** /**2025**

Copy to:

The Director, Judicial Training and Research Institute, Lucknow for information.

Registrar General

2025 INSC 1144

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 12174 OF 2025

[Arising out of Special Leave Petition (Civil) No. 11068 of 2023]

M. RAJENDRAN & ORS. ...APPELLANT(S)

VERSUS

M/S KPK OILS AND PROTIENS INDIA PVT. LTD. & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 12175 OF 2025

[Special Leave Petition (Civil) No. 14696 of 2023]

J U D G M E N T

Signature Not Verified
Digitally signed by
VISHAL ANAND
Date: 2025.09.23
19:44:58 IST
Reason:

J.B. PARDIWALA, J.:

For the convenience of the exposition, this judgment is divided into the following parts: -

INDEX

I. FACTUAL MATRIX 3

A. Proceedings before the DRT. 8

II. IMPUGNED ORDER 10

III. SUBMISSIONS OF THE PARTIES 13

A. Submissions on behalf of the appellants. 14

B. Submissions on behalf of the borrowers. 14

IV. ISSUE FOR DETERMINATION 15

V. ANALYSIS 15

A. Legislative History and Scheme of the SARFAESI Act. 15

i. The impetus behind enactment of the SARFAESI Act. 16

ii. Relevant Statutory Provisions at Play. 22

B. Section 13(8) of the SARFAESI Act and the Decision of this Court in *Bafna Motors*. 39

i. Factual Scenario in *Bafna Motors*. 44

ii. Ratio of the Decision in *Bafna Motors*. 47

a. Position of Law prevailing prior to the Amendment of Section 13(8) of the SARFAESI Act. 48

b. The 2016 Amendment to Section 13(8) of the SARFAESI Act and the Contradictory Views on the subject. 58

c. Effect of the 2016 Amendment on the Right of Redemption under Section 13(8) of the SARFAESI Act. 77

C. How the decision of this Court in *Bafna Motors* should be understood? 81

i. There cannot be any artificial distinction in the right of redemption under Section 13(8) of the SARFAESI Act for different modes of transfer. 82

a. Scheme for sale of Immovable Secured Asset under Section 13(8) of the SARFAESI Act read with Rule(s) 8 and 9 of the SARFAESI Rules. 82

ii. There is only a single Notice of Sale required under Rule 8(6) of the SARFAESI Rules for transfer of secured asset, by lease, assignment or sale. 101

a. Contradictory Views of the High Court on the subject. 102

b. The Scheme under the SARFAESI Rules envisages one single composite Notice of Sale of Immovable Secured Asset. 106

iii. What is the import of the expression "before the date of publication" used in Section 13(8) of the SARFAESI Act. 125

D. Whether, the Amended Section 13(8) of the SARFAESI Act is retrospective in nature? 130

VI. FINAL CONCLUSION 135

1. Leave granted.

2. Since the issues raised in both the captioned appeals are the same and the challenge is also to the self-same judgment and order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

3. These appeals arise from the judgment and order passed by the High Court of Judicature at Madras dated 24.04.2023 in Writ Petition No. 1882 of 2023 with Writ Miscellaneous Petition Nos. 1987-1988 of 2023 respectively by which the High Court allowed the writ petition filed by the respondent Nos. 1 to 4 respectively herein and thereby the Sale Certificate issued by the respondent No. 5 in favour of the appellants (Auction Purchasers) dated 22.03.2021 came to be quashed and the respondent No. 5 Bank was directed to permit the respondent Nos. 1 to 4 herein to redeem the mortgage and close the loan account of the borrowers.

I. <u>FACTUAL MATRIX</u>

4. For the sake of convenience, the appellants herein shall be referred to as the Auction Purchasers. The respondent Nos. 1 to 4 respectively

hereinafter referred to as the Original Borrowers and the respondent No. 5 shall hereinafter be referred to as the Bank.

5. The borrowers availed cash credit facilities on 06.01.2016 from the Bank to the tune of Rs. 5 crore and a term loan of Rs. 30 lakh respectively. The respondent Nos. 2 and 3 respectively herein stood as guarantors by creating equitable mortgage over various immovable properties including the "*Subject Property*" *vide* the Memorandum of Deposit of Title Deeds bearing Document No. 68 of 2016 dated 06.1.2016 with the Sub Registrar Office, Dharapuram for the purpose of securing the repayment of the credit facilities.

6. The description of the subject property is as under: -

> *"Vacant dry land to an extent of 1.92 acres in Old S.F. NO. 540, 541 and New S.F. No.476/2, Dharapuram Alangiyam Road, Chitraravuthanpalayam, Dharapuram Taluk, Triuppur District.*
> *Boundaries:*
> *On the South by : East West in RS No. 535*
> *On the West by: 0.89 acres of land belonging to Nachimuthu Gounder in RSNo. 476/2*
> *On the North by : Land belonging to Kuppusamy Gounder in RS No. 476/1.*
> *On the East by: Land belonging to Palanisamy and Vallinayaki in RSNo. 475/3."*

7. It may not be out of place to state at this stage that the respondent nos. 3 and 4 respectively herein are the son and daughter in law respectively of the respondent No. 2 who had executed guarantees to secure repayment of the credit facilities availed by KPK Oils Limited i.e., Original Borrowers.

8. On 31.12.2019, the borrower's auction was classified as a Non-Performing Asset (NPA) by the Bank due to default in repayment of the outstanding dues.

9. On 12.02.2020, the Bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the "**SARFAESI Act**") for the outstanding dues of INR 3,96,15,672 payable as on 31.12.2019.

10. It is not in dispute that the respondent Nos. 1 to 4 respectively had not preferred any representation under Section 13(3A) of the SARFAESI Act.

11. On 28.10.2020, the Bank issued notice under Section 13(4) of the SARFAESI Act seeking to take over the possession of the secured asset for the debt amount of INR 4,39,82,862.20 due and payable as on 30.09.2020.

12. On 31.10.2020, the Bank published Possession Notice in two newspapers, namely, "New Indian Express" in English and "Dinamani" in vernacular language.

13. On 28.12.2020, the MD and Partner of the Borrower i.e., the respondent No. 4 herein filed S.A. No. 5 and 7 of 2020 respectively under Section 17 of the SARFAESI Act challenging the Possession Notice dated 28.10.2020 before the DRT, Coimbatore.

14. On 22.01.2021, the Bank issued an Auction Sale Notice accordance with Rule 8 read with Rule 9 of the Security Interest (Enforcement) Rules, 2002, (for short, the "**SARFAESI Rules**") for sale of the secured subject property for recovery of INR 4,55,64,590.20 due and payable as on 31.12.2020.

15. On 24.01.2021, the aforesaid Auction Sale Notice of the subject immovable property was also published in the "New Indian Express" and "Dinamani" newspapers respectively.

16. Sometime in February 2021, the borrowers along with Shri Palanisami filed S.A. No. 160 of 2021 under Section 17 of the SARFAESI Act challenging the aforesaid Auction Sale Notice before the DRT, Coimbatore.

17. On 26.02.2021, the appellants herein participated and successfully bid in Auction Sale for sale consideration of Rs. 1,25,60,000/-. On 20.03.2021, the appellants herein deposited the entire sale consideration of INR 1,25,60,000 with the Bank.

18. On 22.03.2021, upon payment of the entire sale consideration the Bank issued a Sale Certificate in favour of the appellants.

19. The sale consideration received by the Bank was appropriated towards the outstanding loan amount. In March 2021, after the sale came to be confirmed the borrowers paid a sum of Rs. 2,88,00,000

towards the outstanding dues under the loan. It is pertinent to note that at the relevant point of time an amount of INR 61,91,000 was still outstanding towards the loan amount.

A. <u>Proceedings before the DRT</u>.

20. After the completion of sale and issuance of the Sale Certificate, the DRT passed an order of *status quo* dated 26.03.2021. Since the appellants herein were not made party to the proceedings before the DRT, the DRT *vide* order dated 26.03.2021 proceeded to pass an order of *status quo* despite the fact that the appellants herein were not made party in the said proceedings. Later an application for impleadment was filed by the appellants in the proceedings before the DRT.

21. On 07.05.2021, the borrowers paid an amount of INR 62,74,123.74 towards the outstanding dues for releasing the other properties.

22. On 07.05.2021, the Bank closed the loan account of the borrowers after appropriating a sum of INR 1,25,60,000 received by it out of the sale consideration on auction of the secured assets as aforesaid.

23. On 14.07.2021, the application for impleadment filed by the appellant came to be allowed.

24. On 07.12.2021, 14.03.2021, 01.06.2022, 24.06.2022 and 11.07.2022 respectively, adjournments were sought in S.A. No. 160 of 2021 by the borrowers. Once again on 06.05.2022, 01.06.2022, 24.06.2022, and 11.07.2022 respectively, adjournments were sought in S.A. No. 517 of 2020.

25. On 19.01.2023, the DRT, Coimbatore dismissed the SA No. 517 of 2020 wherein the Possession Notice under Section 13(4) of the SARFAESI Act was under challenge. On the very same day and date the DRT by a separate judgment dismissed the S.A. No. 160 of 2021 wherein the Sale Notice dated 22.01.2021 was under challenge.

II. IMPUGNED ORDER

26. The borrowers without availing the alternative statutory remedy of preferring statutory appeal before the Appellate Tribunal went to the High Court and preferred Writ Petition No. 1882 of 2023, seeking to challenge the Sale Certificate dated 22.03.2021 for the first time.

27. The High Court *vide* order dated 24.01.2023 issued notice and directed that *status quo* be maintained as the borrowers were ready and willing to clear the outstanding dues by paying INR 50,00,000 by 25.01.2023 and the balance amount within a period of next seven working days.

28. On 24.01.2023, the borrowers deposited INR 50,00,000 with the Bank. Another demand draft of INR 92,01,158 dated 31.01.2023 was deposited by them with the Bank.

29. The High Court allowed the writ petition holding that the issue as regards the right to redemption under Section 13(8) of the SARFAESI Act was no long *res integra* in view of the decision of this

Court in ***Mathew Varghese v. Amritha Kumar and Ors.*** reported in **(2014) 5 SCC 610**.

30. The High Court while allowing the writ petition filed by the borrowers held as under:

> *"10. Thus, in spite of the authoritative pronouncement of the Hon'ble Supreme Court of India, the DRT has been time and again holding that the right of redemption is lost on the fall of the hammer as per Section 13(8) which is legally unsustainable and therefore only in the extraordinary circumstances, as the question of law has to be made clear this writ petition is entertained by this Court and therefore, the objection on the ground of alternative remedy, though is a valid objection and is also followed by this Court generally in relegating the parties only to the DRT, in view of the above peculiar and extraordinary circumstance, and because the contention of the borrower / guarantors was not on air, but by paying the entire sum outstanding to the bank, as an exceptional case this writ petition is entertained by this Court and accordingly we over rule the said objection raised on behalf of the respondents.*
>
> *11. It is the objection of the respondent bank that initially when the petitioners paid a sum of Rs.2,88,00,000/~ in the month of March 2021 and thereafter Rs.62,74,123.74/~ on 17.05.2021, by accepting the sale of the property and by closing the loan account is concerned, except for the bald averment in Para 5 of the counter affidavit, no material whatsoever is produced before this Court. If such is the case, there would have been written communications to that effect on either side. Besides, it could be seen that even in the interim order dated 26.03.2021 was passed by the DRT, the following has been stated;*
>
> *Learned counsel for the Respondent Bank submitted that the property is sold on the scheduled date of auction and the Sale Certificate is also issued. However, the Sale Certificate is not*

registered as of now. The Applicant also paid substantial amount of dues of about 50% of the amount claimed.

The Applicant having paid a substantial amount of about 50% of the claim amount, this Tribunal is of the view that a status-quo order is required to be passed in the interest of justice. Hence, there shall be an order of status quo as of today. Meanwhile, the Applicant directed to initiate steps to implead the auction purchaser in this case.

12. Therefore, had the petitioner agreed for the same and remitted Rs.2,88,00,000/- in the month of March 2021, the same would have been brought to the notice of the DRT also and an order of status quo not to register the sale certificate would not have been granted. Therefore when the borrower, for some reasons, did not repay the loan promptly, but however manages to pay the entire amount as claimed by the respondent bank even at the last minute, the same cannot be rejected on technical reasons, as the very purpose of the law of mortgage is to create security for the loan and not to result in the ownership of the property being transferred.

13. While we overrule the objections on behalf of the respondents, we hold that the auction purchasers will be entitled for the return of the entire sum of Rs.1,25,60,000/- paid by them and they will also be entitled to interest at the rate of 9% per annum from the date of remitting the amounts till the date of repayment. It goes without saying that it is only the writ petitioners/borrowers who have to make good the said interest amount."

31. The High Court ultimately issued the following directions in para 14 which reads thus:

"14. In the result,
(a) The writ petition is allowed and the impugned sale certificate dated 22.03.2021 issued by the first respondent in favour of the respondents 3 to 11 stands quashed.

(b)The first respondent is directed to close the Loan A/c No.136700150950167 as the entire due amount is already paid;

(c)The first respondent shall also issue due receipt for the discharge of mortgage and the same shall be presented before the appropriate Sub Registrar;

(d)The first respondent bank is directed to refund the entire sum of Rs.1,25,60,000/~ to the respondents 3 to 11 within one week from the date of receipt of a copy of this order;

(e)The first respondent bank shall also calculate the interest at the rate of 9% per annum on the said amount paid by the auction purchasers from the date of the respective remittance of the amount till the date of repayment and intimate the same by writing to the petitioners within one week thereafter.

(f)Upon receipt of the written communication from the first respondent bank, the entire interest amount shall be remitted to the first respondent bank within one week therefrom by the writ petitioners and the first respondent bank shall pay out the same to the respondents 3 to 11;

(g)It is made clear that if the writ petitioners default in the payment of interest as aforesaid within the aforesaid time the writ petition shall stand dismissed automatically without any further reference to this Court."

32. In such circumstances referred to above, the auction purchasers are here before this Court with the present appeal.

III. SUBMISSIONS OF THE PARTIES

A. <u>Submissions on behalf of the appellants</u>.

33. Ms. Praveena Gautam, the learned counsel appearing for the Auction Purchasers vehemently submitted that the High Court committed an egregious error in entertaining the writ petition and passing the impugned judgment and order. She would submit that the issues involved in the present appeal are now covered by a decision of this Court in ***Celir LLP v. Bafna Motors (Mumbai) Private Ltd***. reported in **(2024) 2 SCC 1**.

34. In such circumstances referred to above, the learned counsel would submit that there being merit in his appeal the same may be allowed and the impugned judgment and order be quashed.

B. <u>Submissions on behalf of the borrowers</u>.

35. Mr. Huzefa Ahmedi, the learned counsel appearing for the borrowers while opposing this appeal vehemently submitted that the ratio or rather the principles enunciated in ***Bafna Motors*** (supra) are not applicable in the facts and circumstances of the present case. He would submit that in the case in hand the

loan was obtained on 06.01.2016 whereas Section 13(8) came to be amended with effect from 01.09.2016. He would submit that the amended Section 13(8) of the SARFAESI Act would not have retrospective operation. He would submit that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order.

36. In such circumstances referred to above, the learned counsel would submit that there being no merit in this appeal the same may be dismissed.

IV. ISSUE FOR DETERMINATION

37. Having heard the learned counsel appearing for the parties and having gone through the materials on record the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order?

V. ANALYSIS

A. Legislative History and Scheme of the SARFAESI Act.

i. The impetus behind enactment of the SARFAESI Act.

38. Till early 1990s, the civil suits were being filed for recovery of the dues of banks and financial institutions under the Act 1882 and the Code of Civil Procedure, 1908 ("**CPC**"). Due to various difficulties the banks and financial institutions had to face in recovering loans and enforcement of securities, the Parliament enacted the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, the "**RDBFI Act**").

39. On account of lack of infrastructure and manpower, the regular civil courts were not in a position to cope up with the speed in the adjudication of recovery cases. In the light of recommendations of the Tiwari Committee the special tribunals came to be set up under the provisions of the RDBFI Act referred to above for the recovery of huge accumulated NPA of the Bank loans.

40. On the continuing rise in number of Non-Performing Assets (NPA) at banks and other financial institutions in India; a poor rate of loan recovery and the failure of the existing legislation in redressing the difficulties of recovery by banks; the Narasimham Committee I & II

and Andyarujina Committee were constituted by the Government for examining and suggesting banking reforms in India. These Committees in their reports observed that one out of every five borrower was a defaulter, and that due to the long and tedious process of existing frame work of law and the overburdening of existing forums including the specialised tribunals under the 1993 Act, any attempt of recovery with the assistance of court/tribunal often rendered the secured asset nearly worthless due to the long delays. In this background the Committees thus, proposed new laws for securitisation in order to permit banks and financial institutions to hold securities and sell them in a timely manner without the involvement of the courts.

41. On the recommendations of the Narasimham Committee and Andyarujina Committee, the SARFAESI Act was enacted to empower the banks and financial institutions to take possession of the securities and to sell them without intervention of the court.

42. The statement of objects and reasons for which the Act has been enacted reads as under: -

"STATEMENT OF OBJECTS AND REASONS

The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, inter alia, have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court. Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on the 21st June, 2002 to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the Ordinance would enable banks and financial institutions to realise long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce nonperforming assets by adopting measures for recovery or reconstruction."

43. This Court in ***Mardia Chemicals Ltd. & Ors. v. Union of India & Ors.*** reported in **(2004) 4 SCC 311**, examined the history and legislative backdrop that ultimately led to the enactment of the SARFAESI Act as under: -

> *"34. Some facts which need to be taken note of are that the banks and the financial institutions have heavily financed the petitioners and other industries. It is also a fact that a large sum of amount remains unrecovered. Normal process of recovery of debts through courts is lengthy and time taken is not suited for recovery of such dues. For financial assistance rendered to the industries by the financial institutions, financial liquidity is essential failing which there is a blockade of large sums of amounts creating circumstances which retard the economic progress followed by a large number of other consequential ill effects. Considering all these circumstances, the Recovery of Debts Due to Banks and Financial Institutions Act was enacted in 1993 but as the figures show it also did not bring the desired results. Though it is submitted on behalf of the petitioners that it so happened due to inaction on the part of the Governments in creating Debts Recovery Tribunals and appointing presiding officers, for a long time. Even after leaving that margin, it is to be noted that things in the spheres concerned are desired to move faster. In the present-day global economy it may be difficult to stick to old and conventional methods of financing and recovery of dues. Hence, in our view, it cannot be said that a step taken towards securitisation of the debts and to evolve means for faster recovery of NPAs was not called for or that it was superimposition of undesired law since one legislation was already operating in the field, namely, the Recovery of Debts Due to Banks and Financial Institutions Act. It is also to be noted that the idea has not erupted abruptly to resort to such a legislation. It appears that a thought was given to the problems and the Narasimham Committee was constituted which recommended for such a legislation keeping in view the changing times and economic situation whereafter yet another Expert Committee was constituted, then alone the impugned law was enacted. Liquidity of finances and flow of money is essential for any healthy and*

growth-oriented economy. But certainly, what must be kept in mind is that the law should not be in derogation of the rights which are guaranteed to the people under the Constitution. The procedure should also be fair, reasonable and valid, though it may vary looking to the different situations needed to be tackled and object sought to be achieved.

xxx xxx xxx

36. In its Second Report, the Narasimham Committee observed that NPAs in 1992 were uncomfortably high for most of the public sector banks. In Chapter VIII of the Second Report the Narasimham Committee deals about legal and legislative framework and observed:

> *"8.1. A legal framework that clearly defines the rights and liabilities of parties to contracts and provides for speedy resolution of disputes is a sine qua non for efficient trade and commerce, especially for financial intermediation. In our system, the evolution of the legal framework has not kept pace with changing commercial practice and with the financial sector reforms. As a result, the economy has not been able to reap the full benefits of the reforms process. As an illustration, we could look at the scheme of mortgage in the Transfer of Property Act, which is critical to the work of financial intermediaries…."*

One of the measures recommended in the circumstances was to vest the financial institutions through special statutes, the power of sale of the assets without intervention of the court and for reconstruction of assets. It is thus to be seen that the question of non-recoverable or delayed recovery of debts advanced by the banks or financial institutions has been attracting attention and the matter was considered in depth by the Committees specially constituted consisting of the experts in the field. In the prevalent situation where the amounts of dues are huge and hope of early recovery is less, it cannot be said that a more effective legislation for the purpose was uncalled for or that it could not be resorted to. It is again to be noted that after the Report of the Narasimham

Committee, yet another Committee was constituted headed by Mr Andhyarujina for bringing about the needed steps within the legal framework. We are therefore, unable to find much substance in the submission made on behalf of the petitioners that while the Recovery of Debts Due to Banks and Financial Institutions Act was in operation it was uncalled for to have yet another legislation for the recovery of the mounting dues. Considering the totality of circumstances and the financial climate world over, if it was thought as a matter of policy to have yet speedier legal method to recover the dues, such a policy decision cannot be faulted with nor is it a matter to be gone into by the courts to test the legitimacy of such a measure relating to financial policy."

44. In this regard, reference may also be made to the following observations of this Court in the case of ***United Bank of India v. Satyawati Tondon & Ors.*** reported in **(2010) 8 SCC 110** which laid emphasis on the need for an expeditious mechanism for recovery of debts as the impetus for the enactment of the SARFAESI Act. The relevant observations read as under: -

"1. [...] With a view to give impetus to the industrial development of the country, the Central and State Governments encouraged the banks and other financial institutions to formulate liberal policies for grant of loans and other financial facilities to those who wanted to set up new industrial units or expand the existing units. Many hundred thousand took advantage of easy financing by the banks and other financial institutions but a large number of them did not repay the amount of loan, etc. Not only this, they instituted frivolous cases and succeeded in persuading the civil courts to pass orders of injunction against the steps taken by banks and financial institutions to recover their dues. Due to lack of adequate infrastructure and non-availability of manpower, the regular courts could not accomplish the task of expeditiously

adjudicating the cases instituted by banks and other financial institutions for recovery of their dues. As a result, several hundred crores of public money got blocked in unproductive ventures.

2. In order to redeem the situation, the Government of India constituted a committee under the Chairmanship of Shri T. Tiwari to examine the legal and other difficulties faced by banks and financial institutions in the recovery of their dues and suggest remedial measures. The Tiwari Committee noted that the existing procedure for recovery was very cumbersome and suggested that special tribunals be set up for recovery of the dues of banks and financial institutions by following a summary procedure. The Tiwari Committee also prepared a draft of the proposed legislation which contained a provision for disposal of cases in three months and conferment of power upon the Recovery Officer for expeditious execution of orders made by adjudicating bodies."

ii. Relevant Statutory Provisions at Play.

45. Section 13 of the SARFAESI Act contains the provisions relating to the enforcement of the security interest and the manner in which the same may be done by the secured creditor without the intervention of the court or tribunal in accordance with its provisions. The said provision reads as under: -

*"**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.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

Provided that –
(i) the requirement of classification of secured debt as non performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee;

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non payment of secured debts by the borrower.

(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower: Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery

Tribunal under section 17 or the Court of District Judge under section 17A.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely: –

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

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

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.

(5B) Where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13.

(5C) The provisions of section 9 of the Banking Regulation Act, 1949 (10 of 1949) shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from

public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

> *(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and*
> *(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.*

(9) Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than sixty per cent. in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in Act, 1956 (1 of 1956):

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and

in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimate dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation.— For the purposes of this sub-section, —

(a) "record date" means the date agreed upon by the secured creditors representing not less than sixty per cent. in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measured specifies in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Act.

(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor."

46. Rules 8 and 9 respectively of the SARFAESI Rules prescribe the procedure and formalities to be followed for the sale of immovable secured asset as per Section 13 of the SARFAESI Act.

47. Rule 8 of the SARFAESI Rules stipulates the manner in which sale of an immovable secured asset may take place at the behest of the secured creditor, and reads as under: -

*"**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.

(2) The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspaper one in vernacular language having sufficient circulation in that locality, by the authorised officer.

(2A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of rule 8.

(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.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the 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 including through e-auction mode; or
(d) by private treaty.

Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provision of Jammu and Kashmir Transfer of Property Act, 1977 shall apply to the person who acquires such property in the State.

(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 the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.

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

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;
(b) the secured debt for recovery of which the property is to be sold;
(c) reserve price of the immovable secured assets below which the property may not be sold;
(d) time and place of public auction or the time after which sale by any other mode shall be completed;
(e) deposit of earnest money as may be stipulated by the secured creditor; (f) any other terms and conditions, which the authorised officer considers it necessary for a purchaser to know the nature and value of the property.

(8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled between the secured creditors and the proposed purchaser in writing."

48. On the other hand, Rule 9 of the SARFAESI Rules provides when the immovable property may be sold by the secured creditor, or put it simply, the time of sale along with the formalities by which such sale would be concluded. The said rule reads as under: -

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

(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

Provided further that if sale of immovable property by any one of the methods specified by sub-rule (5) of rule 8 fails and sale is required to be conducted again, the authorised officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 8:

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorised officer conducting the sale and in default of such deposit, the property shall be sold again; by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited to the secured creditor and the property shall be resold and the defaulting purchaser shall forfeit

all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen days, from date of finalisation of the sale.

(8) On such deposit of money for discharge of the encumbrances, the authorised officer shall issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make, the payment accordingly. (9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not."

49. Section 35 of the SARFAESI Act contains the overriding clause and provides that the Act shall override any other law which is inconsistent with its provisions, and reads as under: -

> *"**35. The provisions of this Act to override other laws.–***
> *The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

50. Section 37 of the SARFAESI Act provides that the provisions of the SARFAESI Act shall be in addition to the Acts mentioned in or and any other law for the time being in force and further that the other laws shall also be applicable alongside the SARFAESI Act. The said provision reads as under: -

> *"**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."*

51. This Court in ***Madras Petrochem Ltd. & Anr. v. Board for Industrial and Financial Reconstruction & Ors.*** reported in **(2016) 4 SCC 1**, recapitulated the object behind the enactment of the SARFAESI Act and in that context examined the purpose of Sections 13, 35 and 37

respectively of the SARFAESI Act with the following observations given as under: -

> *"16. It is important at this stage to refer to the genesis of these three legislations. Each of them deals with different aspects of recovery of debts due to banks and financial institutions. Two of them refer to creditors' interests and how best to deal with recovery of outstanding loans and advances made by them on the one hand, whereas the Sick Industrial Companies (Special Provisions) Act, 1985, on the other hand, deals with certain debtors which are sick industrial companies [i.e. companies running industries named in the Schedule to the Industries (Development and Regulation) Act, 1951] and whether such "debtors" having become "sick", are to be rehabilitated. The question, therefore, is whether the public interest in recovering debts due to banks and financial institutions is to give way to the public interest in rehabilitation of sick industrial companies, regard being had to the present economic scenario in the country, as reflected in parliamentary legislation.*
>
> *xxx xxx xxx*
>
> *19. While this Act had worked for a period of about 7 years, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was brought into force, pursuant to various committee reports. [...]*
>
> *20. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 took away the jurisdiction of the courts and vested this jurisdiction in tribunals established by the Act so as to ensure speedy recovery of debts due to the banks and financial institutions mentioned therein. This Act also included one appeal to the Appellate Tribunal, and transfer of all suits or other proceedings pending before any court to tribunals set up under the Act. The Act contained a non obstante clause in Section 34 stating that its provisions will have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any other law. In the year 2000, this Act was amended so as to incorporate a new sub-section (2) in Section 34*

together with a saving provision in sub-section (1). It is of some interest to note that this Act was to be in addition to and not in derogation of various Financial Corporation Acts and the Sick Industrial Companies (Special Provisions) Act, 1985. Clearly, therefore, the object of the 2000 Amendment to the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was to make the Sick Industrial Companies (Special Provisions) Act, 1985 prevail over it.

21. Regard being had to the poor working of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was brought into force in the year 2002. [...]

22. This 2002 Act was brought into force as a result of two committee reports which opined that recovery of debts due to banks and financial institutions was not moving as speedily as expected, and that, therefore, certain other measures would have to be put in place in order that these banks and financial institutions would better be able to recover debts owing to them.

xxx xxx xxx

24. The "pivotal" provision, namely, Section 13 of the said Act makes it clear that banks and financial institutions would now no longer have to wait for a tribunal judgment under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 to be able to recover debts owing to them. They could, by following the procedure laid down in Section 13, take direct action against the debtors by taking possession of secured assets and selling them; they could also take over the management of the business of the borrower. They could also appoint any person to manage the secured assets possession of which has been taken over by them, and could require, at any time by notice in writing to any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due from the borrower, to pay the secured creditor so much of the money as is sufficient to pay the secured debt.

25. In order to further the objects of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Act contains a non obstante clause in Section 35 and also contains various Acts in Section 37 which are to be in addition to and not in derogation of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Three of these Acts, namely, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992, relate to securities generally, whereas the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 relates to recovery of debts due to banks and financial institutions. Significantly, under Section 41 of this Act, three Acts are, by the Schedule to this Act, amended. We are concerned with the third of such Acts, namely, the Sick Industrial Companies (Special Provisions) Act, 1985, in Section 15(1) of which two provisos have been added. It is the correct interpretation of the second of these provisos on which the fate of these appeals ultimately hangs."

(Emphasis supplied)

52. Furthermore, ***Madras Petrochem*** (supra) made one another pertinent observation that Section(s) 35 and 37 respectively of the SARFAESI Act form a unique scheme of overriding provisions, however the scope and ambit of Section 37 is restricted only to the securities law. The relevant portion is reproduced as under: -

"39. This is what then brings us to the doctrine of harmonious construction, which is one of the paramount doctrines that is applied in interpreting all statutes. Since neither Section 35 nor Section 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is subject to the other, we think it is necessary to interpret the expression "or any other law for the time being in force" in Section 37. If a literal meaning is given to the said expression, Section 35 will

become completely otiose as all other laws will then be in addition to and not in derogation of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Obviously this could not have been the parliamentary intendment, after providing in Section 35 that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 will prevail over all other laws that are inconsistent therewith. A middle ground has, therefore, necessarily to be taken. According to us, the two apparently conflicting sections can best be harmonised by giving meaning to both. This can only be done by limiting the scope of the expression "or any other law for the time being in force" contained in Section 37. This expression will, therefore, have to be held to mean other laws having relation to the securities market only, as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is the only other special law, apart from the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, dealing with recovery of debts due to banks and financial institutions. On this interpretation also, the Sick Industrial Companies (Special Provisions) Act, 1985 will not be included for the obvious reason that its primary objective is to rehabilitate sick industrial companies and not to deal with the securities market."

(Emphasis supplied)

53. In interpreting the various provisions of the SARFAESI Act and the SARFAESI Rules framed thereunder, one must be mindful of the observations made by this Court in ***Mardia Chemical*** (supra), which are significant. This Court in ***Mardia Chemical*** (supra) observed that the provisions of the SARFAESI Act & SARFAESI Rules must be interpreted keeping in mind the economic object which is sought to

be achieved by the legislature, the relevant observations read as under: -

> *"34. Some facts which need to be taken note of are that the banks and the financial institutions have heavily financed the petitioners and other industries. It is also a fact that a large sum of amount remains unrecovered. Normal process of recovery of debts through courts is lengthy and time taken is not suited for recovery of such dues. For financial assistance rendered to the industries by the financial institutions, financial liquidity is essential failing which there is a blockade of large sums of amounts creating circumstances which retard the economic progress followed by a large number of other consequential ill effects. Considering all these circumstances, the Recovery of Debts Due to Banks and Financial Institutions Act was enacted in 1993 but as the figures show it also did not bring the desired results. Though it is submitted on behalf of the petitioners that it so happened due to inaction on the part of the Governments in creating Debts Recovery Tribunals and appointing presiding officers, for a long time. Even after leaving that margin, it is to be noted that things in the spheres concerned are desired to move faster. In the present day global economy it may be difficult to stick to old and conventional methods of financing and recovery of dues. Hence, in our view, it cannot be said that a step taken towards securitisation of the debts and to evolve means for faster recovery of NPAs was not called for or that it was superimposition of undesired law since one legislation was already operating in the field, namely, the Recovery of Debts Due to Banks and Financial Institutions Act. It is also to be noted that the idea has not erupted abruptly to resort to such a legislation. It appears that a thought was given to the problems and the Narasimham Committee was constituted which recommended for such a legislation keeping in view the changing times and economic situation whereafter yet another Expert Committee was constituted, then alone the impugned law was enacted. Liquidity of finances and flow of money is essential for any healthy and growth-oriented economy. But certainly, what must be kept in mind is that the law should not be in derogation of the rights which are guaranteed to the people under the Constitution. The procedure should also be fair, reasonable and valid, though it may*

vary looking to the different situations needed to be tackled and object sought to be achieved."

(Emphasis supplied)

B. Section 13(8) of the SARFAESI Act and the Decision of this Court in *Bafna Motors*.

54. In the present *lis,* we are concerned with sub-section 8 of Section 13 of the SARFAESI Act referred to above. At the cost of repetition, the relevant portion of the said provision is reproduced below for convenience: -

> *"**13. Enforcement of security interest.–***
> *(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-*
>
> > *(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and*
> >
> > *(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.*
>
> (Emphasis supplied)

55. A plaint reading of Section 13 sub-section (8) of the SARFAESI Act reveals that the said provision is in two parts, being as under: -

(i) ***First,*** it enables the borrower to exercise his right of redemption upto a particular point of time by stipulating the time limit during which the borrower can tender all the dues with interest, costs and charges to the secured creditor;

(ii) **Secondly,** it enables the secured creditor to exercise its power to deal or dispose of the secured asset, by providing as to when the secured creditor can proceed to sell, auction, assign or lease the secured asset.

56. The entire impugned judgment of the High Court is based on the decision of this Court in ***Mathew Varghese*** (supra). Section 13(8) of the SARFAESI Act, prior to its amendment by Act 44 of 2016 (for short, the "**2016 Amendment**"), stipulated that, 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 steps shall be taken by him for transfer or sale of that secured asset.

57. In the said decision of this Court, while construing the scope of the pre-amended Section 13 sub-section (8) of the SARFAESI Act, it was observed that 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; the ersthilw provision of Section 13(8), as it stood prior to the 2016 Amendment, clearly stipulates that the borrower 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; and the right of redemption, conferred under Section 13(8) of the SARFAESI Act, is to repay the entire debt due to the secured creditor.

58. The words "*if the dues of the secured creditor*", used in Section 13(8) of the SARFAESI Act, would only mean the dues in its entirety, and not the price fetched on the sale of one of the secured assets in a public auction. The words "*that secured asset*" in Section 13(8) is preceded by the words "*transfer or sale*", and even in case one of the secured assets is brought to sale, the borrower is obligated to repay the entire dues

of the secured creditor together with costs, charges and expenses before the date fixed for sale or transfer, to prevent the secured creditor from either selling or transferring, or from taking further steps for the transfer or sale of, that secured asset.

59. We may look into paragraphs 40 and 41 respectively of the judgment in ***Mathew Varghese*** (supra) which read as under:

> *"40. Reliance was also placed upon the decision in Mardia Chemicals Ltd. vs. Union of India. In para 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".*
>
> *41. Here again we find that even if there was 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 realisation 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."

(Emphasis supplied)

60. The afore referred are the two paragraphs on which strong reliance has been placed on behalf of the borrowers. According to learned counsel appearing for the borrowers, the aforesaid paragraphs indicate that it is open to the borrower to pay the auction amount and secure release of that particular asset which is brought to sale.

61. All that has been held, in the aforesaid paragraphs of the judgment in ***Mathew Varghese*** (supra), is that, if there is some difference between the amount tendered by the borrower while exercising his right to redeem under Section 13(8) of the SARFAESI Act, the question of difference in the amount must be kept open for a decision subsequently but, on that score, the right of redemption of the mortgagor cannot be frustrated. The aforesaid observations of this Court only means that, if there is a minor dispute regarding the extent of dues payable to the secured creditor by the borrower, and if the borrower is ready and willing to redeem the entire amount due to the secured creditor, and pay the said sum as computed by them,

then the differential amount can be permitted to be paid later under Section 13(8) of the SARFAESI Act. The law declared by this Court, in ***Mathew Varghese*** (supra), does not permit a borrower, after an auction is held, to come forward and tender payment of merely the auction amount for release of the auctioned secured asset.

62. We shall now look into the decision of this Court in ***Bafna Motors*** (supra) authored by one of us, J.B. Pardiwala, J.

63. In ***Bafna Motors*** (supra) this Court held that a borrower has a right to redeem the mortgage only till the publication of the Auction Notice under Section 13(8) of the **SARFAESI Act**. This Court the analysed orders passed by various High Courts in interpreting the provisions of Section 13(8) of the SARFEASI Act, post the 2016 Amendment and the intent underlying the amendment.

i. Factual Scenario in *Bafna Motors*.

64. The Union Bank of India had sanctioned credit facility to Bafna Motors (Mumbai) Private Limited in 2017 for INR 100 crore against which a security in the form of a simple mortgage was created over a parcel of land situated in Thane, Maharashtra. The Borrower

defaulted in repayment and accordingly its loan account was declared as a Non-Performing Asset (NPA). The Bank issued a Demand Notice under Section 13(2) of the SARFAESI Act for repayment of the Loan amount, along with the interest, costs, etc, i.e. INR 123.83 crore. Due to failure to repay of the outstanding amount, the Bank proceeded to take possession of the Mortgaged Property.

65. The borrower challenged the Demand Notice before the DRT. The Bank attempted to auction the Mortgaged Property eight times during 2022-23. On June 14, 2023, the Bank auctioned the Mortgaged Property for a reserve price of INR 105 crore. Celir LLP participated in the auction and was declared as the successful bidder, and a sale confirmation letter was issued to the Purchaser by the Bank. The Purchaser also deposited 25% of the bid amount, which the Bank acknowledged.

66. The Borrower at this stage filed an interim application before the DRT for redemption of mortgage upon repayment of the Outstanding Amount. The IA was opposed by the Bank and the Purchaser. The Purchaser had deposited the balance amount

towards the Mortgaged Property, and the Bank was in receipt of the said amount (total Rs 105 crore). Upon hearing the arguments, the DRT reserved the IA for orders.

67. Pending the order of the DRT, the Borrower approached the High Court of Bombay by way of a writ petition under Article 226 of the Constitution of India Act, 1950, to direct the Bank to permit it (Borrower) to redeem the Mortgaged Property. The High Court allowed the borrower to redeem the Mortgaged Property upon payment of INR 25 crore on the same day and the balance amount within two weeks. Upon failure of the Borrower to abide by the directions of the High Court, the Mortgaged Property would be sold in favour of the Purchaser. The order was challenged by the Purchaser by way of a special leave petition before this Court.

68. The Purchaser argued that the right of redemption of the mortgagor stood extinguished upon publication of Auction Notice as per amended Section 13(8) of the SARFAESI Act. Furthermore, once the sale is confirmed, the Bank is under a legal obligation to issue a sale certificate to the Purchaser.

69. Contrary to the above, the Borrower contended that Section 13(8) of the SARFAESI Act does not deal with the right of redemption of mortgagor and in such circumstances, Section 60 of the Transfer of Property Act, 1882 would be applicable. Section 60 of the Transfer of Property Act has been interpreted to reserve the right of the mortgagor to redeem the property till the sale deed has been executed in favour of the third party.

ii. Ratio of the Decision in *Bafna Motors*.

70. During the course of hearing, our attention was drawn to several decisions of various High Courts, which, upon a reading of our judgment in ***Bafna Motors*** (supra) appear to not have fully understood the *ratio* that has been laid therein. A certain degree of ambiguity seems to persist as regards the precise point of time when the borrower's right of redemption under Section 13 sub-section (8) of the SARFAESI Act could be said to be extinguished, particularly in cases where the mode of transfer, sale etc. of the secured asset is by means other than a public auction.

71. Thus, with a view to obviate any confusion, it is necessary to once again look into Section 13 sub-section (8) of the SARFAESI Act threadbare, in order to better understand, what has been conveyed in so many words by this Court in ***Bafna Motors*** (supra).

a. Position of Law prevailing prior to the Amendment of Section 13(8) of the SARFAESI Act.

72. Prior to the amendment to Section 13(8) of SARFAESI Act, in the case of ***Mathew Varghese*** (supra) this Court had applied the principles pertaining to redemption of mortgage as enshrined in Section 60 of the Transfer of Property Act, 1882 (for short, the "**TP Act**") for construing the pre-amendment provision of Section 13(8) of the SARFEASI Act.

73. Section 60 of the TP Act provides the general statutory right of the mortgagor to redeem the mortgage and reads as below: -

> "***60. Right of mortgagor to redeem.–***
> *At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to*

deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgage, (b) where the mortgage is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgage has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by decree of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgage shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property.—*Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgages than one, all such mortgages, has or have acquired, in whole or in part, the share of a mortgagor."*

74. This Court in ***Narandas Karsondas v. S.A. Kamtam & Anr.*** reported in **(1997) 3 SCC 247**, upon examining Section 60 of the TP Act, held that the mortgagor's right to redeem will stand extinguished only after completion of sale by a registered deed, and made the following relevant observations reproduced below: -

"28. The Rights and Liabilities of Mortgagor are dealt with in Section 60 of the Transfer of Property Act. It is that at any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished. There is a proviso that the right conferred by this section has not been extinguished by the act of the parties or by decree of a Court. The right conferred by Section 60 of the Transfer of Property Act is called a right to redeem. Therefore, the said Section 60 provides for a right of redemption provided that the right has not been extinguished by the act of parties.

xxx xxx xxx

33. In India, the word "transfer" is defined with reference to the word "convey". The word "transfer" in English law in its narrower and more usual sense refers to the transfer of an estate in land. Section 205 of the Law of Property Act in England defines: "Conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument. The word "conveys" in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.

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 authorise the sale. Therefore, until the sale is complete by registration the mortgagor does not lose right of redemption.

xxx xxx xxx

37. In view of the fact that only on execution of conveyance, ownership passes from one party to another it cannot be held that the mortgagor lost the right of redemption just because the property was put to auction. The mortgagor has a right to redeem unless the sale of the property was complete by registration in accordance with the provisions of the Registration Act."

(Emphasis supplied)

75. A similar view was taken by this Court in ***L.K. Trust v. EDC Limited & Ors.*** reported in **(2011) 6 SCC 780** wherein it was held that in India it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by a registered instrument that the

mortgagor's right of redemption embodied in Section 60 of the TP Act will get extinguished. It further observed that the conferment of power to sell the mortgaged property without intervention of the Court, in a mortgage deed, in itself, will not deprive the mortgagor of his right of redemption under the said provision. The relevant observations read as under: -

> *"53. On analysis of arguments advanced at the Bar, this Court finds that the proposition that in India it is only on execution of conveyance and the registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption stands extinguished is well settled. Further it is not the case of the appellant that a registered Sale Deed had been executed between the appellant-trust and the respondent No. 1 pursuant to the Resolution passed by the respondent No. 1 and, therefore, in terms of Section 54 of the Transfer of Property Act 1882 no title relating to the disputed property had passed to the appellant at all.*
>
> *54. What is ruled in Narandas Karsandas (Supra) is that in India, there is no equity or right in property created in favour of the purchaser by the contract between the mortgagee and the proposed purchaser and in view of the fact that only on execution of conveyance, ownership passes from one party to another, it cannot be held that the mortgagor lost the right of redemption just because the property was put to auction. In this case, the respondent Housing Society, the mortgagor, had taken loan from the co-respondent Finance Society and mortgaged the property to it under an English mortgage. On default, the mortgagee exercised its right under the mortgage to sell the property without intervention of Court and after notice, put the property to sale by public auction. The appellant auction purchaser paid the sums due. Before the sale was completed by registration etc. the mortgagor sought to exercise his right of redemption by tendering the amount due. The appellant had based his case on*

the plea that in such a situation the mortgagee acts as agent of the mortgagor and hence binds him.

55. Rejecting the appeal, this Court has held that 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 or by decree of a court. What is held by this Court is that, 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 but the conferment of power to sell the mortgaged property without intervention of the Court, in a mortgage deed, in itself, will not deprive the mortgagor of his right of redemption. This Court in the said case further explained that the extinction of the right of redemption has to be subsequent to the deed conferring such power and the right to redemption is not extinguished at the expiry of the period. This Court emphasized in the said decision that the equity of redemption is not extinguished by mere contract for sale."

(Emphasis supplied)

76. The erstwhile provision of Section 13 sub-section (8) of the SARFAESI Act, as originally enacted, read as under: -

*"**13. Enforcement of security interest.–***
(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."

77. This Court examined the right of redemption of mortgage under the TP Act vis-à-vis the SARFAESI Act for the first time in ***Mathew Varghese*** (supra).

78. As already discussed in the foregoing paragraphs of this judgment, this Court in ***Mathew Varghese*** (supra), placing reliance on ***Narandas Karsondas*** (supra) found no occasion for drawing any distinction between the principles enshrined in Section 60 of the TP Act 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. It observed that since Section 13 of the SARFAESI Act is nothing but a conferment of power upon the secured creditor to sell the security interest without the intervention of the court, the principles underlying Section 60 of the TP Act would be attracted, since the provision of Section 60 applies with full rigour even in respect of sale of mortgage property without the intervention of court. The relevant observations read as under: -

> *"38. [...] 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 in Narandas Karsondas [Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247] while construing Section 60 of the TP Act. But as rightly contended by Mr Shyam Divan, we fail to note any distinction to be drawn while applying the abovesaid principles, even in respect of the sale of secured assets created by way of a secured interest in favour of the secured creditor under the provisions of the SARFAESI Act, read along with the relevant Rules. We say so, inasmuch as, we find that even while setting out the principles in respect of the redemption of a mortgage by applying Section 60 of the TP Act, this Court has envisaged the situation where such mortgage deed providing for resorting to the sale of the mortgage property without the intervention of the Court. Keeping the said situation in mind, it was held that the right of redemption will not get extinguished merely at the expiry of the period mentioned in the mortgage deed. It was also stated that the equity of redemption is not 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.

39. When we apply the above principles stated with reference to Section 60 of the TP 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 that secured asset. We find no reason to state that the principles laid down with reference to Section 60 of the TP 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 abovestated principles apply on all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act.

41. [...] even if there was 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 realisation 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."

(Emphasis supplied)

79. In ***Dwarika Prasad v. State of Uttar Pradesh*** reported in **(2018) 5 SCC 491**, this Court considered the unamended Section 13(8) of the

SARFAESI Act, keeping in mind the decision in the case of ***Mathew Varghese*** (supra) and held that the right of redemption of mortgage is not lost until there is a transfer by a registered instrument. The relevant observations read as under: -

> *"8. [...] These provisions have fallen for interpretation before this Court in Mathew Varghese. Dwelling on Section 60 of the Transfer of the Property Act, 1882 this Court held that the right of redemption is available to a mortgagor unless it stands extinguished by an act of parties. The right of the mortgagor to redeem the property survives until there has been a transfer of the mortgagor's interest by a registered instrument of sale. [...]"*

80. In, yet one another decision of this Court in ***Allokam Peddabbayya & Anr. v. Allahabad Bank & Ors.*** reported in **(2017) 8 SCC 272**, a similar view was taken, that the right of redemption is lost once the property is put to auction and a sale certificate is issued in lieu thereof. The relevant observations made therein are as under: -

> *"23. The aforesaid discussion leads to the conclusion that the plaintiffs lost the right to sue for redemption of the mortgaged property by virtue of the proviso to Section 60 of the Act, no sooner that the mortgaged property was put to auction-sale in a suit for foreclosure and sale certificate was issued in favour of Defendant 2. There remained no property mortgaged to be redeemed. The right to redemption could not be claimed in the abstract."*

81. Prior to the amendment to Section 13 sub-section (8) of the SARFAESI Act, the position of law that prevailed, as per the decision

of ***Mathew Varghese*** (supra), was that the principle underlying Section 60 of the TP Act was extended and applied to Section 13(8) of the SARFAESI Act to hold that the borrower has absolute right to redeem the property by repaying the debt before the sale of such property.

82. Thus, prior to the amendment of Section 13(8) of the SARFAESI Act, this Court consistently held, that the borrower shall continue to have a right of redemption of mortgage until the execution of the conveyance of the secured asset by way of a registered instrument.

83. The reason which impelled this Court in ***Mathew Varghese*** (supra), in holding so, was because it found no inconsistency between the unamended Section 13(8) of the SARFAESI Act and the general right of redemption under Section 60 of the Transfer of Property Act.

b. The 2016 Amendment to Section 13(8) of the SARFAESI Act and the Contradictory Views on the subject.

84. On 1st September, 2016, the Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provisions (Amendment)

Act, 2016 was enacted, which *inter-alia* amended sub-section 8 of Section 13 of the SARFAESI Act, and substituted the words "*any time before the date fixed for sale or transfer" of the original provision with "at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets"*. The amended provision of Section 13 sub-section (8) of the SARFAESI Act, now reads as under: -

> "***13. Enforcement of security interest.–***
> *(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets, –*
>
> > *(i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and*
> >
> > *(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."*

85. Over a period of time, many orders of different courts, inconsistent with each other had accumulated on the interpretation of the

amended Section 13 sub-section (8) of the SARFAESI Act, that had made it very difficult to apply the correct principles of law as regards the right of redemption by the borrower under the SARFAESI Act.

86. The High Court of Andhra Pradesh in ***Sri. Sai Annadhatha Polymers & Anr. v. Canara Bank rep. by its Branch Manager, Mandanapalle*** reported in **2018 SCC OnLine Hyd 178** took the view that as per ***Mathew Varghese*** (supra), under the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. The court went on to say that the amended provisions of Section 13(8) of the SARFAESI Act, however brought in a radical change inasmuch as the right of the borrower to redeem the secured asset would now stand extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the SARFAESI Rules. The relevant observations made by the High Court are reproduced hereinbelow: -

> *"6. In terms of the amended provisions of Section 13(8) of the SARFAESI Act, the right of redemption given to the borrower would expire upon publication of such a notice. However, Rule 8(6) of the Rules of 2002, as interpreted by the Supreme Court in*

Mathew Varghese v. M. Amritha Kumar [(2014) 5 SCC 610], stipulates that the thirty day notice period mentioned therein is for the purpose of enabling the borrower to redeem his property. Significantly, this provision remains unaltered. Therefore, this statutory notice period of thirty days is sacrosanct and deviation therefrom would curtail the statutory right of redemption available to the borrower. However, in terms of the amended Section 13(8) of the SARFAESI Act, once the notice under Rule 9 of the Rules of 2002 is published, the said right stands extinguished.

xxx xxx xxx

20. In the light of the aforestated changes in the statutory scheme, certain crucial aspects may be noted. As per the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. Case law consistently held to the effect that a sale or transfer is not completed until all the formalities are completed and there is an effective transfer of the asset sold. In consequence, the borrower's right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. The recent judgment of the Supreme Court in ITC LIMITED v. BLUE COAST HOTELS LIMITED also affirmed this legal position.

21. However, the amended provisions of Section 13(8) of the SARFAESI Act bring in a radical change, inasmuch as the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime stands drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till completion of the sale or transfer of the secured asset in favour of the auction purchaser. [...]

xxx xxx xxx

23. Therefore, even after the amendment of Section 13(8) of the SARFAESI Act, a secured creditor is bound to afford to the borrower a clear thirty day notice period under Rule 8(6) to enable him to exercise his right of redemption. In consequence, a notice under Rule 9(1) of the Rules of 2002 cannot be published prior to expiry of this thirty day period in the new scenario, post amendment of Section 13(8) of the SARFAESI Act, as such right of redemption would stand terminated immediately upon publication of the sale notice under Rule 9(1) of the Rules of 2002. The judgment of the Supreme Court in CANARA BANK v. M. AMARENDER REDDY, which was rendered in the context of the unamended provisions, would therefore have no application to the post-amendment scenario in the light of the change brought about in Section 13(8). To sum up, the post-amendment scenario inevitably requires a clear thirty day notice period being maintained between issuance of the sale notice under Rule 8(6) of the Rules of 2002 and the publication of the sale notice under Rule 9(1) thereof, as the right of redemption available to the borrower in terms of Rule 8(6) of the Rules of 2002, as pointed out in MATHEW VARGHESE, stands extinguished upon publication of the sale notice under Rule 9(1)."

(Emphasis supplied)

87. The amended Section 13(8) of the SARFAESI Act was also looked into by the High Court of Telangana in the case of ***K.V.V. Prasad Rao Gupta v. State Bank of India*** reported in **2021 SCC OnLine TS 328** and relying on the aforesaid decision of the Andhra Pradesh High Court in the case of ***Sri. Sai Annadhatha Polymers*** (supra), the court held that the right of the borrower to redeem the property stands extinguished upon publication of sale notice after the expiry

of thirty-days period of notice to the borrower. The relevant observations read as under: -

> *"21. Thus from the above judgments it is clear that under Rule 8(6) of the Rules of 2002, the petitioners are entitled for a thirty day notice period enabling them to clear the loan and to redeem the property as envisaged under Section 13(8) of the SARFAESI Act, and that if they fail to repay the amount within the stipulated period, after expiry of said period of 30 days, the secured creditor is entitled to issue publication of sale notice under Rule 9(1), and that on publication of such notice, the right of the borrower to redeem the property stands extinguished."*
>
> (Emphasis supplied)

88. However, in a conflicting judgement, one another Bench of the Telangana High Court in ***Concern Readymix v. Corporation Bank*** reported in **2018 SCC OnLine Hyd 783** relied upon Section 60 of the TP Act to hold that the borrower's right of redemption would continue to exist until the execution of the conveyance. It observed that the amended Section 13(8) of the SARFAESI Act merely restricts the right of the secured creditor to proceed further with the transfer or sale of the secured asset, but not the right of redemption enjoyed by the borrower. The relevant observations read as under: -

> *"10. The first distinction between the unamended and amended sub-section (8) of Section 13 is that before amendment, the facility of repayment of the entire dues along with the costs, charges and expenses, was available to the debtor at any time before the date fixed for the sale or transfer. But after the amendment, the facility is available upto the time before the date*

of publication of notice for public auction or inviting quotations or tender from public or private treaty. The second distinction is that the unamended sub-section (8) did not provide for the contingency when the dues are tendered by the borrower before the date of completion of the sale or lease but after the issue of notice. But the amended sub-section (8) takes care of the contingency where steps have already been taken by the secured creditor for the transfer of the secured asset, before the payment was made. Except these two distinctions, there is no other distinction.

xxx xxx xxx

13. What is important to note both from the amended and unamended provisions of Section 13(8) and Rule 9(1) is that both of them do not speak in express terms, about the equity of redemption available to the mortgagor. The amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale. A restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor. The payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Securitisation Act, 2002. Redemption comes later. But unfortunately, some Courts, on a wrong reading of the decision of the Supreme Court in Mathew Varghese v. M. Amritha Kumar [(2014) 5 SCC 610], have come to the conclusion as though Section 13(8) speaks about the right of redemption. The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects. But in law it is not. It may be seen from paragraphs-34 to 36 of the decision of the Supreme Court in Mathew Varghese that the Supreme Court took note of Section 60 of the Transfer of Property Act and the combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act to come to the conclusion that the extinction of the right of redemption comes much later than the sale notice. Therefore, we should first understand that the right of

redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted.

14. Perhaps the Courts were tempted to think that Section 13(8) speaks about redemption, only on account of what is found in Rule 3(5) of the Security Interest (Enforcement) Rules, 2002. Rule 3(5) inserted by way of amendment with effect from 04-11 2016 states that the demand notice issued under Section 13(2) should invite the attention of the borrower to the provisions of Section 13(8), in respect of the time available to the borrower to redeem the secured assets. Today, it may be convenient for one borrower to contend that the right of redemption will be lost immediately upon the issue of notice under Rule 9(1). But if it is held so, the same would tantamount to annulling the relevant provisions of the Transfer of Property Act, which do not stand expressly excluded, insofar as the question of redemption is concerned."

(Emphasis supplied)

89. The aforesaid decision of ***Concern Readymix*** (supra) was carried upto and challenged before this Court by way of Special Leave Petition (C) No. 20500 of 2019, which came to be dismissed by this Court in *limine*, being as follows: -

"*ORDER*

Delay condoned.
The Special Leave Petition is dismissed"

90. Additionally, this Court in ***Shakeena & Anr. v. Bank of India & Ors.*** reported in **(2021) 12 SCC 761** while dealing with the unamended provision of Section 13(8) of the SARFAESI Act stated that as a result of the amended provision, a more stringent condition has been

stipulated whereby the borrower, in order to redeem the mortgage, is now required to tender all dues to the secured creditor before the date of publication of notice for auction. The relevant observations read as under: -

> *"15. Be it noted that on 1-9-2016 amendment to Section 13(8) of the 2002 Act came into force as a result of which the dues of the secured creditor together with all costs, charges and expenses incurred by him are required to be tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets.*
>
> *xxx xxx xxx*
>
> *30. A fortiorari, it must follow that the appellants have failed to exercise their right of redemption in the manner known to law, much less until the registration of the sale certificate on 18-9 2007. In that view of the matter no relief can be granted to the appellants, assuming that the appellants are right in contending that as per the applicable provision at the relevant time [unamended Section 13(8) of the 2002 Act], they could have exercised their right of redemption until the registration of the sale certificate — which, indisputably, has already happened on 18-9 2007. Therefore, it is not possible to countenance the plea of the appellants to reopen the entire auction process. This is more so because, the narrative of the appellants that they had made a valid tender towards the subject loan accounts before registration of the sale certificate, has been found to be tenuous. Thus understood, their right of redemption in any case stood obliterated on 18-9 2007. Further, the amended Section 13(8) of the 2002 Act which has come into force w.e.f. 1-9-2016, will now stare at the face of the appellants. As per the amended provision, stringent condition has been stipulated that the tender of dues to the secured creditor together with all costs, charges and expenses incurred by him shall be at any time before the "date of publication of notice" for public auction or inviting quotations*

or tender from public or private deed for transfer by way of lease assessment or sale of the secured assets. [...]"

(Emphasis supplied)

91. However, in ***S. Karthik and Ors. v. N. Subhash Chand Jain and Ors***. reported in **(2022) 10 SCC 641** a three-Judge Bench of this Court placing reliance on ***Mathew Varghese*** (supra) once again noted that under Section 13 sub-section (8) of the SARFAESI Act, the mortgagor, i.e. the borrower, retains 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. The relevant observations read as under: -

"53. It could thus be seen that this Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] observed 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. This Court further observed that applying the principles stated with reference to Section 60 of the Transfer of Property 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, a free hand is given to a secured creditor to resort to a sale without the intervention of the court or tribunal. It has, however, been held that 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.

54. This Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] further held that if the tender is made by the borrower at the last moment before the sale or transfer, the secured asset should not be sold or transferred by the secured creditor. This Court held that there was no reason as to why the general principle laid down by this Court in Narandas Karsondas [Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247] with reference to Section 60 of the Transfer of Property Act could not have application in respect of a secured interest in a secured asset created in favour of a secured creditor. It has been held that the said principles will apply on all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act.

xxx xxx xxx

115. Even if viewed from another angle, the claim of the appellants is not sustainable. The two-Judge Bench of this Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254], has heavily relied on the judgment of the three-Judge Bench of this Court in Narandas Karsondas . It has been held by this Court in Narandas Karsondas [Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247], that 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. It has been held, that 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.

xxx xxx xxx

118. It is further relevant to note that this Court in Dwarika Prasad [Dwarika Prasad v. State of U.P., (2018) 5 SCC 491] and in Shakeena [Shakeena v. Bank of India, (2021) 12 SCC 761] held that the right to redemption stands extinguished on the sale certificate getting registered."

(Emphasis supplied)

92. A similar view as ***Concern Readymix*** (supra) was taken by the Punjab & Haryana High Court in ***Pal Alloys and Metal India Private Limited & Ors. v. Allahabad Bank & Ors.*** reported in **2021 SCC OnLine P&H 2733**. The court therein looked into the Report of the Joint Committee on the 2016 Amendment to arrive at the conclusion that under the amended Section 13(8) of the SARFAESI Act, the right of redemption of mortgage would continue till the execution of conveyance or issuance of sale certificate. It further observed that the decision in ***Shakeena*** (supra) was not applicable inasmuch as it did not examine the provision of Section 13(8) of the SARFAESI Act through the lens of Section 60 under the TP Act. The relevant observations read as under: -

> *"78. It is interesting to note that para 24 of the Report of the Joint Committee referred to above deals with the proposed amendment to Section 13(8) of the SARFAESI Act and gives a heading "Provisions to stop secure creditor to lease or assignment or sale in the prescribed conditions-Amendment to Section 13(8) of the SARFAESI Act.*
>
> *79. Thus the amendment was proposed w.r.t. when to stop the secured creditor from selling/transferring the secured asset. The words 'when to stop the exercise of right of redemption by the borrower/mortgagor' were not used.*
>
> *80. In the said Report, at pg.12, Clause 11(ii) of the Bill which proposed to amend Section 13(8) of the SARFAESI Act is noted. After extracting the existing Section 13(8) of the Act which stands as under: —*

"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."

81. The proposed modification to Section 13(8) is set out also at pg.12 as under: –

"(8) Where the amount of 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 lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be leased, assigned or sold by the secured creditor; and

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

82. Strangely, on the next page at page 13, the following is stated:-

"The Committee after examining the proposed amendment and the existing Rules in this regard decide to modify proposed Clause 11(ii) [section 13(8) of the principal Act] as under: "

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or

inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

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

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

83. Nothing is mentioned as to why the proposal indicated in Page 12 was changed on page-13 differently.

84. Admittedly, what is stated in page-13 was passed in the Lok Sabha and the Rajya Sabha and then it became the Act 44 of 2016 and came into effect on 01.09.2016.

85. But the important thing to note is that this Report does not indicate that the Committee had even considered Section 60 of the Transfer of Property Act, 1882, which provides the general law of right to redeem a mortgaged asset of a mortgager vis-a-vis the provisions of the SARFAESI Act.

86. It no where says that there was an intention to bring about a change with regard to the time before which a mortgagor can exercise his right to redeem the mortgage.

87. Even the heading of Para 24 of the Report which says "Provisions to stop secure creditor to lease or assignment or sale in the prescribed conditions - Amendment to Section 13(8) of the SARFAESI Act" seems to suggest that the focus of the Committee was on the date when the secured creditor's right to lease or assignment or sale would stop.

88. In our considered opinion, it is clear that the legislature did not have any intention to deal with the right of mortgagor to redeem the mortgage when they amended Sec.13(8) or to modify it in any manner; and amendment cannot be said to have intended to modify the existing law which continued even when the un amended Section 13(8) of the SARFAESI Act was in force. The amended Sec.13(8) was intended to only deal with the date when the secured creditor's right to transfer the secured asset should stop and nothing more.

xxx xxx xxx

93. The view taken by the High Court for the State of Telangana and Andhra Pradesh in M/s. Concern Ready Mix [(2019) 3 ALD 384 : Law Finder Doc Id # 1380151] commends itself to us and we accept and approve the same.

94. We shall now consider the judgment of Supreme Court in Shakeena [(2019) 5 RCR (Civil) 689 (SC)]cited by the counsel for 1st respondent. In that case, sale certificate had been issued in favour of the auction purchasers on 06.01.2006 and a Writ Petition was filed on 19.01.2006 challenging the auction and it was registered on 18.9.2007. The Court held that the appellants had failed to make a valid tender of amounts due or exercise their right of redemption in a manner known to law until the registration of the sale certificate on 18.09.2007 and that the right of redemption stood obliterated on 18.09.2007. The statement therein in para 29 that as per the amended provision stringent conditions have been stipulated that the tender of dues to the secured creditor shall be at any time before the date of publication of notice for public auction does not, in our opinion, lead to an expression of opinion by the Supreme Court that the law of redemption as per Section 60 of the Transfer of Property Act would not apply in view of amendment to Section 13(8). We do not find any discussion in the decision in Shakeena [(2019) 5 RCR (Civil) 689 (SC)] about the decisions of the apex court dealing with the right of redemption under Sec.60 of the Transfer of Property Act, 1872. So reliance on the said decision does not help the 1st respondent.

xxx xxx xxx

96. Keeping in mind (i) the Report of the Joint Committee on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 discussed above, (ii) the law laid down by the Supreme Court in Mathew Varghese [(2014) 5 SCC 610] and (iii) the decision in M/s. Concern Readymix [(2019) 3 ALD 384 : Law Finder Doc Id # 1380151] of the Telangana and Andhra Pradesh High Court, with which we respectfully agree, we hold that the amended Section 13(8) of the SARFAESI Act merely prohibits a secured creditor from proceeding further with the transfer of the secured asset by way of lease, assignment or sale; a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor; the payment of the amount mentioned in Section 13(8) of the SARFAESI Act ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Act; that redemption comes later; extinction of the right of redemption comes much later than the sale notice; and the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted. We also hold that such a right would continue till the execution of a conveyance i.e. issuance of sale certificate in favour of the mortgagee. [...]

97. It would, therefore, certainly be available to the petitioners herein before the issuance of sale certificate in favour of respondents No. 2 and 3. Point (a) is answered accordingly in favor of the petitioners and against the respondents."

93. The decision in the case of ***Concern Readymix*** (supra) was referred to and relied upon later by the Andhra Pradesh High Court in ***Amme Srisailam v. Union Bank of India, Regional Office, Guntur, rep. by its Region Head & Deputy General Manager, Andhra Pradesh & Ors.*** reported in **2022 SCC OnLine AP 3484**. In the said decision it was held that a conjoint reading of Section(s) 35 and 37 of the

SARFAESI does not appear to exclude the applicability of Section 60 of the TP Act. It further noted, that although this Court in ***Shakeena*** (supra) had taken a contrary view, more particularly that the borrower's right of redemption stands curtailed by the 2016 Amendment, yet in the subsequent larger bench decision of this Court in ***S. Karthik*** (supra) it was held that such right of redemption would extinguish only on the sale certificate getting registered and not upon publication of the notice of auction. Consequently, it held that the right of redemption available to the borrower under Section 60 of the TP would not stand restricted only by virtue of the amended Section 13(8) of the SARFAESI Act. The relevant observations read as under: -

> *"38. After referring to the amendments brought to the Security Interest (Enforcement) Rules, 2002, this Court took the view that amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale if the dues are paid before issuance of notice for public auction. Thereafter it has been held that a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor. Payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the SARFAESI Act. Redemption comes later. It has been held as follows:*
>
> > *The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments*

are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects. But in law it is not.

39. Thus this Court emphasised that the right of redemption is not lost immediately upon the highest bid made by the purchaser in an auction is accepted.

40. A three-Judge Bench of the Supreme Court in S.Karthik (supra) held that the right of redemption which is embodied in Section 60 of the Transfer of Property Act, 1882 is available to the mortgagor unless it has been extinguished by the act of the parties. Only on execution of the conveyance and registration of transfer of mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished. Referring to the previous decisions of the Supreme Court, it has been held that the right to redemption stands extinguished only on the sale certificate getting registered.

41. This position has been explained by the Punjab & Haryana High Court in Pal Alloys & Metal India Private Limited (supra), wherein it has been clarified that the amended Section 13(8) of the SARFAESI Act merely prohibits the secured creditor from proceeding further with the transfer of the secured asset by way of lease, assignment or sale if the dues are paid before issuance of sale notice for public auction. A restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor.

42. Let us now examine the decision of the Supreme Court in Shakeena (supra) relied upon by the petitioner. As opposed to S.Karthik (supra) which was rendered by a three-Judge Bench, Shakeena (supra) was delivered by a two-Judge Bench of the Supreme Court. That was a case which dealt with Section 13(8) of the SARFAESI Act prior to amendment. In this case, the appellants failed to exercise their right of redemption until registration of the sale certificate; therefore, relief was declined.

While coming to the above conclusion, the Division Bench of the Supreme Court adverted to the amended Section 13(8) of the SARFAESI Act observing by way of obiter that tender of dues to the secured creditor with all costs, charges and expenses incurred by him shall be at any time before the date of publication of notice for public auction etc.

43. The decision in Shakeena (supra) was rendered by a two-Judge Bench of the Supreme Court on 20.08.2019. On the other hand, the decision in S.Karthik (supra) was rendered by a three-Judge Bench of the Supreme Court much later i.e., on 23.09.2021. The decision in S.Karthik (supra) being a later judgment and by a larger bench therefore will be binding on us and this decision says that the right of redemption stands extinguished only on the sale certificate getting registered.

44. Before we revert back to the facts of the present case, we may also refer to Sections 35 and 37 of the SARFAESI Act. While Section 35 says that the provisions of the SARFAESI Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, Section 37 clarifies that provisions of the SARFAESI Act or the rules made thereunder shall be in addition to and not in derogation of any other law for the time being in force.

45. This brings us to Section 60 of the Transfer of Property Act, 1882. Section 60 says that at any time after the principal amount has become due, the mortgagor has a right, on payment or tender, of the mortgage money, to require the mortgagee (a) to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof back to the mortgagor, and (c) at the cost of the mortgagor either to re transfer the mortgaged property to him or to such third person as he may direct, or to execute and to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished. As

per the proviso, the right conferred under the aforesaid provision shall not be extinguished by any act of the parties or by decree of a Court.

46. Therefore, on a careful application of Sections 35 and 37 of the SARFAESI Act, it is evident that the situation contemplated under Section 13(8) of the SARFAESI Act does not exclude application of Section 60 of the Transfer of Property Act, 1882. As explained by this Court in Concern Readymix (supra), a restriction on the right of the mortgagee to deal with the property post issuance of notice for public auction is not the same as the right of redemption available to the mortgagor."

(Emphasis supplied)

c. Effect of the 2016 Amendment on the Right of Redemption under Section 13(8) of the SARFAESI Act.

94. This Court in ***Bafna Motors*** (supra) considered the conflicting orders passed by various High Courts in interpreting the provisions of Section 13(8) in relation to the right of redemption by the borrower.

95. In the final analysis, this Court noted that under the pre-amended Section 13(8) of the SARFAESI Act, the borrower could repay the dues, along with the interest and charges at any time "*before the date fixed for sale or transfer*". However, post Amendment, redemption is available *before the date of publication of notice for public auction*.

96. However, the amended Section 13(8) of the SARFAESI Act allows the exercise of right of redemption only till the date of publication of notice, which is a departure from the general right of redemption under the general law and therefore is inconsistent with Section 60 of Transfer of Property Act. In such a situation of inconsistency, the SARFAESI Act being a special one, would override the general law. This Court also took note of Section 35 and Section 37 respectively of the SARFEASI Act and held that Section 35 of the SARFEASI Act will have an overriding effect, notwithstanding anything which is inconsistent with any other law. Further, this Court held that the laws that are mentioned in Section 37 of SARFEASI Act i.e., laws which deal with securities or occupy the same field as the SARFAESI Act, would be applicable in addition to it and not in derogation to any other law.

97. The objects and reasons for the Amendment of the SARFEASI Act was to facilitate expeditious disposal of recovery applications. Taking the same into consideration, the Court noted that an interpretation which furthers the said object and reasons should be

preferred and adopted. If the general law is allowed to govern, it will defeat the very object and purpose of the amended Section 13(8).

98. The Court concluded that the judgement delivered in ***Sri. Sai Annadhatha Polymers*** (supra), as well as in ***K.V.V. Prasad Rao Gupta*** (supra) stipulate the correct position of law and overruled the judgements of the High Courts in ***Amme Srisailam*** (supra), ***Concern Readymix*** (supra), *and* ***Pal Alloys*** (supra).

99. This Court in the last considered the sanctity of public auctions and noted that reading Section 13(8) in any other manner would lead to a worrisome situation as the successful bidder would continue to remain apprehensive till a valid sale certificate is issued.

100. The final conclusion drawn by this Court in ***Bafna Motors*** (supra) reads thus: -

> *"110. We summarise our final conclusion as under: -*
>
> *110.1. The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the Sarfaesi Act.*

110.2. The confirmation of sale by the Bank under Rule 9(2) of the 2002 Rules invests the successful auction-purchaser with a vested right to obtain a certificate of sale of the immovable property in the form given in Appendix V to the Rules i.e. in accordance with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002.

110.3. In accordance with the unamended Section 13(8) of the Sarfaesi Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction-sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction-purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended provisions of Section 13(8) of the Sarfaesi Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the 2002 Rules. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the 2002 Rules and not till the completion of the sale or transfer of the secured asset in favour of the auction-purchaser.

110.4. The Bank after having confirmed the sale under Rule 9(2) of the 2002 Rules could not have withheld the sale certificate under Rule 9(6) of the 2002 Rules, and entered into a private arrangement with a borrower.

110.5. The High Court under Article 226 of the Constitution could not have applied equitable considerations to overreach the outcome contemplated by the statutory auction process prescribed under the Sarfaesi Act.

110.6. The two decisions of the Telangana High Court in Concern Readymix [Concern Readymix v. Corporation Bank, 2018 SCC OnLine Hyd 783 : (2019) 3 ALD 384] and Amme Srisailam [Amme Srisailam v. Union Bank of India, 2022 SCC OnLine AP 3484] do not lay down the correct position of law. In the same way, the decision of the Punjab and Haryana High

Court in Pal Alloys [Pal Alloys & Metal India (P) Ltd. v. Allahabad Bank, 2021 SCC OnLine P&H 2733] also does not lay down the correction position of law.

110.7. The decision of the Andhra Pradesh High Court in Sri Sai Annadhatha Polymers [Sri Sai Annadhatha Polymers v. Canara Bank, 2018 SCC OnLine Hyd 178] and the decision of the Telangana High Court in K.V.V. Prasad Rao Gupta [K.V.V. Prasad Rao Gupta v. SBI, 2021 SCC OnLine TS 328] lay down the correct position of law while interpreting the amended Section 13(8) of the Sarfaesi Act."

(Emphasis supplied)

C. How the decision of this Court in *Bafna Motors* should be understood?

101. Before we proceed to delineate the true purport and effect of the amended Section 13 sub-section (8) of the SARFAESI Act, it would be apposite to first advert to a few decisions which referred to and applied the decision of this Court in ***Bafna Motors*** (supra), so as to ascertain how the said judgment has been understood for the purpose of construing Section 13(8).

102. What can be discerned from the conspectus of cases discussed above is that, predominantly, all the courts and tribunals, on a reading of the decision of this Court in ***Bafna Motors*** (supra), have construed the amended Section 13 sub-section (8) of the SARFAESI Act to mean that the right of redemption of the borrower stands extinguished on

the date on which the notice of auction is published by the secured creditor. In other words, the effect of Section 13(8) has been understood to mean that the borrower would retain the right to redeem the mortgage only up to the date of publication of such auction notice, once such notice is published, the right of redemption would cease.

i. There cannot be any artificial distinction in the right of redemption under Section 13(8) of the SARFAESI Act for different modes of transfer.

a. Scheme for sale of Immovable Secured Asset under Section 13(8) of the SARFAESI Act read with Rule(s) 8 and 9 of the SARFAESI Rules.

103. Again, at the cost of repetition, the amended Section 13 sub-section (8) of the SARFAESI Act is reproduced hereunder: -

> *"**13. Enforcement of security interest.–***
> *(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets, –*
>
> *(i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and*

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

104. A plain reading of the aforesaid provision indicates that where the borrower tenders the amount of dues along with all costs, charges and expenses to the secured creditor "*before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets*", then as per clause (i) the secured asset shall not be transferred by the secured creditor, and as per clause (ii) where any steps towards such transfer, by lease, assignment or sale, as the case may be, was already taken by the secured creditor, then no further steps shall be taken in this regard.

105. To put it simply, as per sub-section (8) of Section 13 of the SARFAESI Act, a borrower can tender the amount of dues to the secured creditor along with all costs, charges and expenses, at any time, before the date of publication of notice for public auction or inviting

quotations or tender from public or private treaty, as the case may be.

106. A borrower has no unfettered right to tender such amount of dues, as stipulated in Section 13(8), after the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be, because the restriction on the secured creditor, from transferring the secured asset, envisaged under clause(s) (i) and (ii) of the said provision, would only be attracted, if the dues are tendered prior to the publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be. Where the borrower tenders such dues after the publication of the notice stipulated in Section 13(8), the secured creditor is not bound to accept it, and can continue to proceed with the transfer of the secured asset, by way of lease, assignment or sale.

107. Section 13 sub-section (8) of the SARFAESI Act must be read along with Rule(s) 8 and 9 of the SARFAESI Rules.

108. The four modes of transfer of secured asset, as envisaged under Section 13(8) of the SARFAESI Act, namely, 'public auction',

'inviting quotations', 'tender from public' and 'private treaty' have been set out and detailed in Rule 8(5) of the SARFAESI Rules. The said rule reads as under: -

> *"**8. Sale of immovable secured assets.-***
>
> *xxx xxx xxx*
>
> *(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 including through e-auction mode; or*
> *(d) by private treaty.*
>
> *Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provision of Jammu and Kashmir Transfer of Property Act, 1977 shall apply to the person who acquires such property in the State."*

109. Rule 8 sub-rule (5) of the SARFAESI Rules *inter-alia* provides the different modes and manner in which an immovable secured asset may be transferred by the secured creditor. The said rule provides

that the secured creditor may transfer the whole or any part of such secured asset by any of the following methods: -

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or
(b) by inviting tenders from the public
(c) by holding public auction including through e-auction mode; or
(d) by private treaty

110. As per Rule 8 sub-rule (6) of the SARFAESI Rules, before the transfer / sale of the immovable secured asset by the secured creditor, by any of the methods enumerated in Rule 8(5), the secured creditor is required to serve to the borrower a notice of thirty-days of the intended sale of such secured asset through any one of the methods specified in Rule 8(5). The Proviso appended to Rule 8(6) further stipulates that where the proposed sale of the secured asset is either by 'inviting tenders from the public' or by 'holding a public auction', then the secured creditor shall cause a public notice in two leading newspapers, in the manner and form specified therein. Rule 8 sub-rule (6) reads as under: -

*"**8. Sale of immovable secured assets.-***

xxx xxx xxx

(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 the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality."

111. Rule 8(7) of the SARFAESI Rules mandates that every notice of sale shall be affixed on the conspicuous part of the immovable property, proposed to be sold in terms of Rule 8(5) and in addition, be uploaded on the website of the secured creditor, containing or setting out the detailed terms and conditions of the sale, as specified thereunder. Rule 8(7) of the SARFAESI Rules reads as under: -

*"**8. Sale of immovable secured assets.-***

xxx xxx xxx

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

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

(b) the secured debt for recovery of which the property is to be sold;
(c) reserve price of the immovable secured assets below which the property may not be sold;
(d) time and place of public auction or the time after which sale by any other mode shall be completed;
(e) deposit of earnest money as may be stipulated by the secured creditor;
(f) any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property."

112. The last provision relevant for our discussion is Rule 9(1) of the SARFAESI Rules. Rule 9(1) provides that no sale of immovable secured asset under these rules, more particularly Rule 8(5) shall take place before the expiry of thirty-days from the date on which the public notice of sale is published as referred to in the Proviso to Rule 8(6) or notice of sale is served to the borrower. The Proviso to Rule 9(1) further stipulates that if the sale of the immovable secured asset under Rule 8(5) fails, then for conducting any subsequent sale, the secured creditor would be required to serve, affix and publish the subsequent notice of sale for a period of fifteen-days only. In other words, for the sale of immovable secured asset in the first instance, a notice period of thirty-days is required to be observed by the secured creditor till the date of actual sale / transfer, and if the

first sale fails, then for all subsequent sales, only a notice period fifteen-days is to be given, as opposed to thirty-days. The said rule reads as under: -

> "***9. Time of sale, Issue of Sale Certificate and delivery of possession, etc.-***
>
> *xxx* *xxx* *xxx*
>
> *(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower:*
>
> *Provided further that if sale of immovable property by any one of the methods specified by sub-rule (5) of Rule 8 fails and sale is required to be conducted again, the authorised officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale."*

113. A perusal of the bare text of Section 13(8) of the SARFAESI Act suggests that the borrower can tender the entire dues of the creditor including all costs, charges and expenses "*before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets*". In other words, the textual reading of the provision appears to convey that the right of redemption of the borrower would be extinguished on the date on which the notice is published for

auction, invitation of quotations, tender from public or private treaty.

114. This has also been the understanding as adopted in ***Cholamandalam Investment*** (supra), ***M. Raghu*** (supra), ***VST Constructions*** (supra), ***P.V. Sitarama Swamy*** (supra) and a catena of other decisions passed by the various High Courts and tribunals from a reading of Section 13(8) of the SARFAESI Act and the judgment of ***Bafna Motors*** (supra).

115. We must first try to and understand which notice is the expression "*before the date of publication of notice*" in sub-section (8) of Section 13 speaking of and what is meant by the word "*publication*" used thereunder.

116. Rule 8(6) of the SARFAESI Rules provides that before the sale of the immovable secured asset, by way of obtaining quotations, inviting tenders, holding auction or by private treaty, a notice of sale has to be served to the borrower. The Proviso to Rule 8(6) provides that where the proposed sale is by way of either public auction or

inviting tenders from public, the secured creditor shall cause a public notice in two leading newspapers.

117. Rule 9(1) of the SARFAESI Rules appears to hold significance in understanding the word "*publication*" employed in Section 13(8), and which notice, the said word appears to be referring to. Rule 9(1) *inter-alia* states that no sale of immovable secured asset shall take place before the expiry of thirty-days from the "*date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8*".

118. From a conjoint reading of the Proviso to Rule 8(6) and Rule 9(1) of the SARFAESI Rules, the words "*before the date of publication of notice*" used in Section 13(8) of the SARFAESI Act, semantically appear to mean the publication of the notice of sale in the newspaper, as specified in Rule 8(6). This is particularly because Rule 9(1) while referring to the notice of sale of public auction / tender under the Proviso to Rule 8(6), specifically uses the word "*published*", thereby suggesting that the term "*publication*" occurring in Section 13(8) is referring to nothing but the notice envisaged under the Proviso to Rule 8(6) or to put it simply, the notice of sale in the newspaper.

119. Thus, although it is entirely possible for an inference to be drawn from the word "*published*" in Rule 9(1) for construing the expression "*before the date of publication of notice*" used in Section 13(8), yet to our minds, this does not appear to be correct understanding of Section 13(8), for the reasons that we shall assign hereinafter.

120. We must not lose sight of the fact that Section 13(8) of the SARFAESI Act speaks of all four modes of sale / transfer, delineated under the SARFAESI Rules, more particularly, Rule 8(5). The provision also refers to each of the mode of sale uniformly and in the same manner. Section 13(8) stipulates that the borrower must tender the dues "*before the date of publication of notice*" for "*public auction or inviting quotations or tender from public or private treaty*" (emphasis).

121. The language couched in the provision of Section 13(8) of the SARFAESI Act, also makes no distinction between what mode or manner of sale is adopted by the secured creditor, insofar as the application of the rigours of the provision is concerned. We say so because, the expression "*before the date of publication of notice of sale*" has not been confined or restricted to only some modes of sale and not to others.

122. The entire expression reads "*before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty*". But if the expression "*before the date of publication of notice of sale*" is construed to be synonymous to the publication of notice of sale in the newspaper in terms of the Proviso to Rule 8(6) alone, then the same would result in an anomaly.

123. Section 13(8), more particularly the expression "*before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty*" would then effectively read to mean that a borrower can exercise its right of redemption of mortgage till the date of publication of notice of sale in the newspaper for "*auction*" where such notice is required, "*or inviting quotations*" where no such notice is required, "*or tender from public*" where such publication of notice is required, "*or private treaty*", where again, no such notice is required to be published. The aforesaid may be better illustrated through the following diagram depicted hereunder: -

> "Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice **for** public auction **or** inviting quotations **or** tender from public **or** private

treaty for transfer by way of lease, assignment or sale of the secured assets,—

> (i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and
>
> (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."

In the above illustration: -

signifies that no notice of sale is required to be published in newspaper.

signifies that notice of sale is required to be published in newspaper.

124. This inherent contradiction within the provision of Section 13(8) of the SARFAESI Act was taken notice of by the High Court of Telangana in ***M/s Venshiv Pharma Chem (P) Ltd. & Anr. v. State Bank of India & Ors.*** reported in **2018 SCC OnLine Hyd 39**. In the said decision the High Court observed that the amended Section 13(8) attaches vital importance to the date of publication of the notice insofar as the right of redemption is concerned. As such, it held that

where the sale of the secured asset is by public auction or inviting tender from public, the date of publication of such sale notice under Rule 9(1) would clinch the right of the borrower to redeem the mortgage. It further observed that where the sale is by inviting quotations or private treaty, there the situation would be covered by clauses (i) and (ii) of the amended Section 13(8) instead. The relevant observations read as under: -

> *"52. Sri M. Narender Reddy, learned senior counsel, would argue that the unamended section 13(8) of the SARFAESI Act was similar in its wording to the amended version thereof, as regards the right of redemption being linked to the date fixed for sale or transfer of the secured asset. However, it may be noted that the amended version contains a new insertion to the effect that the tendering of the dues by the borrower to the secured creditor has to be at any time before the date of publication of notice for public auction or inviting quotations, or tender from public or private treaty for transfer. The language of the unamended version did not contain such a bar and allowed the right of redemption to operate till the date fixed for "sale or transfer" of the secured asset.*
>
> *53. Though Sri M. Narender Reddy, learned senior counsel, would point out that clause (i) in the amended section 13(8) would indicate that if the dues are tendered by the borrower to the secured creditor, the secured assets should not be transferred by way of lease, assignment or sale by the secured creditor and under clause (ii), in case any step has already been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets, before tendering of such amount under this sub-section, no further step should be taken by the secured creditor and therefore, the right of redemption has to be construed accordingly. However, it may be noticed that the amended section 13(8) attaches vital importance to the date of publication of the*

notice. In so far as the date of publication of the notice under rule 9(1) is concerned, be it for a public auction or for inviting tenders from the public, the secured creditor is bound to wait for 30 days from the date on which such publication is carried out before proceeding to the actual sale. Prior to this date, no steps could possibly be taken by the secured creditor for transfer of the secured asset. Therefore, it is only in the other two situations, that is, where the secured creditor resorts to sale of the secured asset by inviting quotations under rule 8(5)(a) or by private treaty under rule 8(5)(d) of the Rules of 2002, that the possibility of a step being taken by the secured creditor for transfer would arise. The situation covered by clauses (i) and (ii) of amended section 13(8) therefore would not arise where the sale is through public auction by publication of a sale notice under rule 9(1).

54. Further, under the new section 13(8), the right of redemption available to the borrower stands drastically curtailed. Now, such right is available to the borrower only up to the date of publication of the notice for public auction or inviting quotations or tender from public for transfer by way of lease, assignment or sale of the secured asset. Thus, when the secured creditor resorts to sale through public auction under rule 8(5) of the Rules of 2002, the date of publication of such sale notice under rule 9(1) of the Rules of 2002 would effectively clinch the right of the borrower to redeem the secured asset. However, rule 8(6) of the Rules of 2002 remained unchanged, despite the amendments in November, 2016. This rule continues to provide that the authorized officer should serve upon the borrower a notice of 30 days before sale of the immovable secured asset. Obviously, this notice is intimation to the borrower of the intention of the secured creditor to recover its dues by sale of such asset, thereby enabling him to exercise his right of redemption under section 13(8) of the SARFAESI Act. Therefore, a clear 30 days would have to be maintained between the date of service of such notice under rule 8(6) of the Rules of 2002 and the expiry of the right of redemption under the amended section 13(8) of the SARFAESI Act."

(Emphasis supplied)

125. What has been conveyed in so many words in ***Venshiv Pharma Chem*** (supra) is that there are two distinct point of time, when the right of redemption of the borrower would stand extinguished under the amended Section 13(8) of the SARFAESI Act. In arriving at the aforesaid conclusion, the High Court appears to have partly agreed with the argument advanced before it, that the amended Section 13(8) is similar in its operation to its unamended counterpart, and the only significant change made is in respect of the clear restriction on the secured creditor to transfer or sell the secured asset once the dues are tendered by the borrower, and thus, there would be no material change in how the right of redemption is to be exercised. The High Court seems to have accepted the contention that the right of redemption under the amended Section 13(8) would have to be construed in accordance with the restrictions engrafted in clauses (i) and (ii), but only in respect of where the sale is by way of inviting quotations or private treaty, and thereby proceeds to hold as under: -

(i) ***First,*** the High Court proceeds to construe the purport of Section 13(8) to give to the borrower a definite and sufficient period of time for redeeming the secured asset, by ensuring

that during this period, the secured creditor does not take any step towards the sale or transfer of the secured asset.

(ii) ***Secondly,*** in view of the significance attached to the date of publication of auction notice under the amended Section 13(8), it rejects the contention that the right of redemption would have to be construed in accordance with the restrictions encapsulated under clauses (i) and (ii) of the provision, insofar as the public auctions or tenders is concerned. According to the High Court where the sale is either through public auction or tender, there the right of redemption would extinguish on the date of publication of the auction notice itself. As before the publication of such auction notice, there exists no possibility for the secured creditor to take steps towards the sale or transfer of the secured asset, in view of the clear mandate requiring the secured creditor to wait for thirty-days before it can publish the notice for auction or tender, as the case may be. Thus, there is no occasion for clauses (i) and (ii) of Section 13(8) to be attracted, and as such the right of redemption would have to be construed in accordance with the substantive part of the provision instead.

(iii) ***Thirdly,*** where however, the sale of the secured asset is either through public auction or tender, there, the possibility of the secured creditor proceeding with such sale is palpable, in the absence of any requirement to maintain a clear 30-day gap. It is for such situations that clauses (i) and (ii) of the amended Section 13(8) would come into the play, and the right of redemption would then necessarily have to be construed to continue to exist till the date of actual transfer, as was the position under the unamended Section 13(8) as per ***Mathew Varghese*** (supra).

126. The line of reasoning adopted by ***Venshiv Pharma Chem*** (supra) to hold that the right of redemption under the amended Section 13(8) of the SARFAESI Act would extinguish differently for different modes of sale, appears to be incorrect. There is nothing in the bare text of Section 13(8) which would suggest that clause(s) (i) and (ii) of the said provision are confined in their application to some modes of sale and not to others. The restrictions on the transfer of the secured asset by way of lease, assignment or sale, under clause(s) (i) and (ii) of Section 13(8) are general and omnibus in nature.

127. The different modes or methods for dealing or disposing the secured asset, as enumerated in the substantive portion of Section 13(8) of the SARFAESI Act are all for the general purpose of facilitating the transfer of the secured asset, either by way of lease, assignment or sale of the secured assets. This is made clear from the general expression "*for transfer by way of lease, assignment or sale of the secured assets,* –" used in the substantive portion of Section 13(8). Had the intent of the legislature been otherwise, then it would not have used the same general expression "*transferred by way of lease assignment or sale*" or "*transfer by way of lease or assignment or sale*" in clauses (i) and (ii), respectively and instead would have specifically alluded to the specific mode(s) of sale, for which such clauses are intended. We shall discuss this issue in detail in the later parts of this judgment.

128. From the above it is manifestly clear that the rigours of Section 13(8) of the SARFAESI Act, including clause(s) (i) and (ii) therein, are intended to apply equally irrespective of whether the transfer / sale of the secured asset happens to be by either public auction, or obtaining quotations or inviting tenders or private treaty, as all of the said methods are inevitably for the same purpose i.e., for the

transfer of secured asset, by lease, assignment or sale of the secured asset.

129. However, at the same time, as aforementioned the Proviso to Rule 8(6) read with Rule 9(1) of the SARFAESI Rules, stipulates that the notice of sale of secured asset has to be published in the newspaper, **only** where the mode of sale is by way of either auction or inviting tenders from the public. For all other remaining modes of sale, i.e, by obtaining quotations or private treaty, there is no requirement to publish the notice of sale.

130. Thus, in order to better understand the true import of the expression "*before the date of publication of notice*", it is necessary to understand the form and manner of notice or notice(s), as the case may be, that is required under the SARFAESI Rules for the transfer of secured asset, by lease, assignment or sale of the secured asset.

ii. There is only a single Notice of Sale required under Rule 8(6) of the SARFAESI Rules for transfer of secured asset, by lease, assignment or sale.

131. The entire controversy on the interpretation of Section 13(8) of the SARFAESI Act, revolves around the interpretation of the expression

"*before the date of publication*". The reason why the said expression has been construed by various High Courts to mean the notice of auction is due to the prevailing misconception, that two separate notices are required, where the mode of sale of the secured asset is either by way of public auction or tender. This misconception has largely been because of a misreading of the provision of Rule(s) 8 and 9 of the SARFAESI Rules respectively.

a. Contradictory Views of the High Court on the subject.

132. The Telangana High Court in ***Venshiv Pharma Chem*** (supra) and ***K.V.V. Prasad Rao Gupta*** (supra) respectively held that the secured creditor is required to give a total of two notices; a thirty-days' notice of sale to the borrower and thereafter, another thirty-days public notice of auction, under the Proviso to Rule 8(6) and Rule 9(1), respectively. This according to the Telangana High Court is necessary, to afford the borrower a reasonable period for exercising his right to redeem the mortgage, which under the amended Section 13(8) would stand extinguished on the date of publication of the auction notice, thus, a clear 30-day gap has to be maintained

between the date of service of notice under Rule 8(6) to the borrower, and the publication of the auction notice under Rule 9(1).

133. The aforesaid view also found favour with the Andhra Pradesh High Court in ***Sri. Sai Annadhatha Polymers*** (supra) and ***Amme Srisailam*** (supra) respectively by placing reliance on ***Mathew Varghese*** (supra), to hold that although Section 13(8) underwent an amendment, yet Rule(s) 8(6) and 9(1) remain unchanged, thus, the *ratio* of ***Mathew Varghese*** (supra) insofar as the requirement of giving two notices with a thirty-day gap each, under the SARFAESI Rules, would continue to hold field.

134. Whereas, another bench of the Telangana High Court in ***Aditya Industries*** (supra) and ***Indian Overseas Bank v. RA Pure Life Science Ltd. & Ors.*** reported in **2023 SCC OnLine TS 634** took a partly contrary view. The High Court appears to have expressed agreement with the proposition that although Rule(s) 8(6) and 9(1) of the SARFAESI Rules contemplates two distinct notices being issued, yet it has disagreed with the views expressed in a ***Venshiv Pharma Chem*** (supra) and ***K.V.V. Prasad Rao Gupta*** (supra) respectively, that there must be a thirty-day gap between the

issuance of each of the said notices. It held that there is no requirement for the secured creditor to give the two notices of sale with a thirty-day gap between each, before it can transfer or sell the secured asset. It observed that the SARFAESI Rules nowhere stipulates a thirty-day gap between the service of notice of sale to the borrower and publication thereof, in the newspaper. According to it, both the notices can be issued by the secured creditor simultaneously. All that is required by Rule(s) 8(6) read with 9(1) is that there should be a thirty-day gap between the issuance of the aforesaid notice or notice(s), as the case may be, and the actual date of sale of the secured asset.

135. On the other hand, one another Bench of the Telangana High Court in ***Concern Readymix*** (supra) held that the SARFAESI Rules, more particularly, Rule(s) 8(6) and 9(1) respectively, contemplate the issuance of only one notice of sale by the secured creditor. It observed that Rule 9(1) does not stipulate the requirement of publishing a separate notice, rather it merely makes a reference to publish the self-same notice that has to be served to the borrower under Rule 8(6). According to it, if Rule(s) 8(6) and 9(1) are construed

to mean that two separate notices are required, then it would result in the borrower having a period of 60-days, which is repugnant to the statutory stipulated period of thirty-days' or fifteen-days' time, as the case may be, under the SARFAESI Rules. Thus, it held that there has to be only one notice under Rule 8(6), and it would be sufficient for Rule 9(1), if the date of auction falls beyond 30 days from the date of issuance of such notice, and publication thereof. In this regard, reliance was placed by the Telangana High Court on the decision of this Court in ***Canara Bank* v. *M. Amarender Reddy*** reported in **(2017) 4 SCC 735**.

136. Thus, there appears to be a divergence of opinion as regards, *first,* whether Rule 8(6) read with Rule 9(1) of the SARFAESI Rules contemplate issuance of two distinct and separate notices of sale; and *secondly*, notwithstanding the aforesaid, whether there is a requirement to maintain a gap of thirty-days each, between the service of notice or notice(s) of sale to the borrower, and the publication of such notice or notice(s) in the newspaper in terms of Rule(s) 8(6) and 9(1), respectively.

b. The Scheme under the SARFAESI Rules envisages one single composite Notice of Sale of Immovable Secured Asset.

137. We shall now look into the unique scheme for the transfer of immovable secured asset, by way of lease, assignment or sale, formed by Rule(s) 8(6), 8(7) and 9(1) of the SARFAESI Rules.

138. Rule 8 sub-rule (6) of the SARFAESI Rules stipulates that the authorized officer of the secured creditor shall serve the borrower a notice of thirty-days for the sale of the immovable property by any of the modes, enunciated in the preceding Rule 8(5).

139. The Proviso to Rule 8(6) further enjoins a duty upon the secured creditor, to cause a public notice, in the form and manner specified therein, where the sale of the immovable property happens to be either by way of public auction or tender. Unlike Rule 8(6), which would apply, in respect of all modes of sale of the immovable secured asset in terms of Rule 8(5), the Proviso thereto, has no application whatsoever, if the sale of the immovable secured asset, is not by way of public auction or tender i.e., the said duty cast on the secured creditor under the Proviso would have no application, if the sale is by way of obtaining quotations or private treaty.

140. Rule 9(1) of the SARFAESI Rules provides that no sale of the immovable property, in terms of Rule 8(5), shall take place before the expiry of thirty-days from the date on which the public notice of sale is published in newspaper, as required under the Proviso to Rule 8(6), or notice of sale has been served to the borrower.

141. We must be mindful to not lose sight of Rule 8(7) of the SARFAESI Act, which is significant to the interpretation of Rule 8(6) and 9(1) of the SARFAESI Rules. Rule 8(7) of the SARFAESI stipulates an additional condition upon the secured creditor to affix and upload every notice of sale, containing the relevant terms and conditions of the sale, as specified under the said Rule, on the conspicuous part of the immovable secured asset proposed to be sold and, on its website, respectively.

142. The foremost reason, why we say that for the transfer of an immovable secured asset by way of lease, assignment or sale, under the SARFAESI Rules by the secured creditor only a single composite notice is required, is in view of the language couched in the provisions of Rule(s) 8 and 9, respectively.

143. The marginal note appended to Rule 9 of the SARFAESI Rules reads "*Time of sale, Issue of Sale Certificate an delivery of possession, etc.*". Thus, it is clear that Rule 9 only provides when the sale of the immovable secured asset may take place along with the formalities by which such sale would be concluded. The "*public notice*" alluded to in Rule 9(1) does not speak of any separate or distinct notice. This is manifest from the expression "*as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower*" used in the said Rule.

144. Rule 8(6) is the first instance, in the entire scheme of the SARFAESI Rules where any reference is made to a notice, insofar as sale of immovable secured asset is concerned. It provides that the secured creditor shall serve to the borrower a "*notice of [...] for sale*" and cause a "*public notice*", if the sale happens to be by way of public auction or tender. In this regard, Rule 8(7) is particularly of significance, which requires that every "*notice of sale*" be affixed on the conspicuous part of the immovable property to be sold as-well as uploaded on the website of the secured creditor.

145. The requirement of notice by the secured creditor for the transfer of secured asset, by lease, assignment or sale under the SARFAESI Rules has to be culled out from Rule 8(6).

146. As already stated, Rule 8(6), is the only provision which speak about 'notice of sale', all other provisions, thereafter, only relate back to Rule 8(6) by making a reference to the notice mentioned under the said rule. Rule 8(7), simpliciter uses the word "*every notice of sale*" indicating, that it is not stipulating the requirement of giving any distinct or sperate notice. Similarly, Rule 9(1) also juxtaposes the word "*public notice*" with the expression "*as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower*", again fortifying that its merely referencing the notice of sale as required under Rule 8(6) or the Proviso thereunder. The Proviso to Rule 8(6), is also similar in nature, inasmuch as it uses the expression "*shall cause a public notice*" in the form as delineated in Appendix IV-A to the SARFAESI Rules.

147. The Appendix to the SARFAESI Rules is also instructive in answering whether the SARFAESI Rules, contemplate giving two distinct notice(s) or one single composite notice. The Appendix to

the SARFAESI Rules contains the statutorily prescribed standard pro-forma format and forms for the various applications, notices, and communications contemplated under the Rules. Interestingly, the Appendix to the SARFAESI Rules prescribes a specific form and format only for the notice as envisaged under the Proviso to Rule 8(6).

148. Significantly, no corresponding form or format has been provided for the notices ostensibly envisaged under Rule 8(7) or Rule 9(1). This omission of any prescribed form for notices under Rule 8(7) or 9(1) indicates that it is really Rule 8(6) which is the substantive provision that stipulates the requirement of issuance of a notice of sale. The other provisions, particularly Rule 8(7) or 9(1) of the SARFAESI Rules respectively, do not contemplate issuance of a distinct notice thereunder, separate and apart from the one under Rule 8(6). Rather the mentioning of "notice of sale" in Rules 8(7) and 9(1) respectively is nothing but a reference to the self-same notice of sale under Rule 8(6).

149. We are conscious of the fact, that the Appendix IV-A to the SARFAESI Rules, specifically mentions that the said prescribed

format is only for the notice envisaged under the Proviso to Rule 8(6). Since there is no form or format prescribed for the notice of sale that has to be served to the borrower in terms of the substantive part of Rule 8(6), it could be said that, the reason why the legislature thought fit to prescribe a standard format only for the notice contemplated under the Proviso to Rule 8(6) and not the other Rules, was because of the public nature of such notice.

150. To obviate the possibility of any ambiguity, *mala-fide,* deception, prejudice or unclarity in the sale process of the secured asset being caused to the public for whom such notices are intended, advertently or inadvertently by the secured creditor, the legislature thought fit to prescribe a standard format. In such circumstances, it could be said that mere omission of any prescribed form or format in the Appendix for the other rules, namely, Rule 8(7) or 9(1) respectively cannot be possibly construed to mean that there is no requirement for two distinct notices of sale.

151. However, a closer look of Appendix IV-A to the SARFAESI Rules would reveal both Rule 8(6) and the Proviso to Rule 8(6) are speaking of one single notice. Rule 8(6) and the Proviso thereto, do

not contemplate issuance of two distinct notices, where the mode of sale happens to be by way of public auction or tender. We say so, because, of the words "*Notice is hereby given to the public in general and in particular to the Borrower(s) and Guarantor(s)*" used in the prescribed standard form for notice under the Proviso to Rule 8(6) provided in the Appendix IV-A. The said prescribed form in Appendix IV-A is reproduced below: -

"***APPENDIX IV-A***
[See proviso to Rule 8(6)]
(Sale notice for sale of immovable properties)

E-Auction Sale Notice for Sale of Immovable Assets under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 read with proviso to Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 ***Notice is hereby given to the public in general and in particular to the Borrower (s) and Guarantor (s)*** *that the below described immovable property mortgaged/charged to the Secured Creditor, the constructive/physical ……(whichever is applicable) possession of which has been taken by the Authorised Officer of …… Secured Creditor, will be sold on "As is where is", "As is what is", and "Whatever there is" on ……(mention date of the sale), for recovery of Rs……due to the …… Secured Creditor from …… … (mention name of the Borrower (s)) and ……(mention name of the Guarantor (s)). The reserve price will be Rs……and the earnest money deposit will be Rs……. (Give*

short description of the immovable property with known encumbrances, if any) For detailed terms and conditions of the sale, please refer to the link provided in …… Secured Creditor's website i.e. www. (give details of website)
Date:

Authorised Officer

Place :]

(Emphasis supplied)

152. The mandatory requirement for stipulation of the words "*Notice is hereby given to the public in general* *and in particular to the Borrower (s) and Guarantor (s)*" (emphasis) in the prescribed format under the Appendix IV-A, makes it manifestly clear that the "*public notice*" contemplated under the Proviso to Rule 8(6), is to be addressed not just to the public in general but also to the borrower(s) and the guarantor(s) to the secured asset. As a natural corollary to the aforesaid, even though, the Proviso to Rule 8(6) only goes so far as to say that, in case of public auction or tender, the secured creditor shall cause a public notice, yet the Appendix IV-A would reveal that this notice to the public is also a notice to the borrower and the guarantors to the secured asset, i.e., effectively, a single composite notice under both Rule 8(6) and the Proviso thereto respectively.

153. It is not difficult to comprehend why, the mentioning or use of the words "*shall cause a public notice*" or "*every notice of sale*" or "*public notice*" in Rule(s) 8(6) Proviso, 8(7) and 9(1), respectively. It is only a reference to the notice of sale required under Rule 8(6) and not a stipulation for causing or publishing a separate, distinct notice under each of the aforesaid rules in addition to the notice of sale required under Rule 8(6).

154. The reason why we say, that Rule 8(6) of the SARFAESI Rules is the sole constituent provision stipulating the requirement of giving a notice of sale is because, ordinarily, when the secured asset given as security to the secured creditor is proposed to be sold off by it, the primary party that has a vested interest in knowing about such intention to sell, is the borrower. There can be no sale of a security interest of the borrower by the secured asset, by the secured creditor, without first, informing the borrower of its intention to sell the same. This is why, irrespective of what the mode of sale is in terms of Rule 8(5), be it by obtaining quotations or inviting tenders, or holding public auction or by private treaty, a notice of the intended sale of

the secured asset by the secured creditor, by any of the aforesaid method, has to be mandatorily given to the borrower.

155. All the other provisions pertaining to the notice of sale, namely the Proviso to Rule 8(6), Rule 8(7) and Rule 9(1) respectively, only govern the manner in which such notice of sale contemplated under Rule 8(6), has to be given. The said rules only go so far as to stipulate certain additional conditions or requirements in effectuating the notice of sale under Rule 8(6), but do not by any stretch stipulate the requirement for causing a completely separate and distinct notice, in addition to the notice of sale under Rule 8(6) of the SARFAESI Rules.

156. In the entire gamut of the scheme formed by Rule(s) 8(6), the Proviso thereto, 8(7) and 9(1) respectively, all speak of only one single composite notice of sale, the only difference between these provisions, is the manner in which such notice of sale is to be effectuated and given. Rule 8(6) speaks of serving a thirty days' notice of sale to borrower. On the other hand, where the public is sought to be involved in the sale process, either by auction or by inviting tender, then the same notice of sale has to be published in the newspaper. As per Rule 8(7), apart from serving the notice of

sale and / or causing it in a newspaper, as the case may be, the self-same notice of sale has to also be affixed on the conspicuous part of the immovable secured asset and also uploaded on the website of the secured creditor.

157. Thus, it can be seen from the above, that Rule 8(6) and the Proviso appended to it, Rule 8(7) and Rule 9(1) of the SARFAESI Rules respectively, all speak of only one single notice of sale. The distinction lies only in the manner in which it is to be given, inasmuch as under Rule(s) 8(6), Proviso thereto, 8(7) and 9(1) respectively, the same notice is required to be served to the borrower, published in the newspaper, affixed on the secured asset & uploaded on the website, and maintain a 30-day gap from the date of actual sale, respectively. Despite the variance in the manner in which the notice of sale is to be given or effectuated under the aforesaid rules, it nevertheless continues to be one single composite notice only.

158. The reason which appears to have weighed with the High Courts in ***Venshiv Pharma Chem*** (supra) and ***K.V.V. Prasad Rao Gupta*** (supra) ***Sri. Sai Annadhatha Polymers*** (supra) for arriving at the

finding that two separate notices are required under the SARFAESI Rules; one under Rule 8(6) and the other under Rule 9(1), was due to the use of the word "*public notice*" in Rule 9(1), which the High Courts understood to mean a separate and distinct notice that has to be published by the secured creditor, apart from the notice that has to be served to the borrower under Rule 8(6).

159. The word "*public notice*" used in 9(1) cannot be singled out and construed devoid of its context. It has to be understood in conjunction with the expression "*as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower*".

160. That apart, if at all, a mere mentioning of the word "*notice*" in Rule 9(1) is the basis for construing that two separate notices are required for the sale of immovable secured asset under the SARFAESI Rules, then it would amount to overlooking the provision of Rule 8(7). Rule 8(7) also mentions the word "*notice of sale*", that has to be affixed on any conspicuous part of the immovable property to be sold as-well as uploaded on the website of the secured creditor. If this proposition of law by the High Courts is accepted, then it would result in three-separate notices being required under the SARFAESI

Rules i.e., under Rule 8(6), Proviso to Rule 8(6) read with Rule 9(1) (where applicable) and Rule 8(7) respectively. While construing a provision, different standards cannot be adopted for one set of provisions and conveniently ignored for some other provision, particularly when all the provisions are substantively the same, at least in nature.

161. The term "notice of sale" is an umbrella term, which refers to and includes the giving of notice for sale by the secured creditor in all the forms and manner that he is obligated to do, under the relevant SARFAESI Rules, depending upon the mode of sale elected by the secured creditor. Thus, whenever, the secured creditor gives a notice for sale in a specific manner either under Rule 8(6), the Proviso thereto read with Rule 9(1) or Rule 8(7) respectively, he is not said to be giving different or distinct notices, they all are parts of one single composite "notice of sale". Until the secured creditor has given the "notice of sale" in all forms and manner that he is required to give under the SARFAESI Rules, including the thirty-day gap between the date when the notice of sale is served, affixed and published, whichever is later, as the case may be, till the date of actual sale, the "notice of sale" for the secured creditor would remain incomplete.

162. It is only after, the secured creditor has given the "notice of sale" in all forms and manner that he is required to give under the SARFAESI Rules, and maintained a period of thirty-days from the date on which he served, affixed or published the notice of sale, whichever is later, would such "notice of sale" be considered valid in the eyes of law.

163. At this stage, we may clarify, with a view to obviate any confusion that, when this Court in ***Bafna Motors*** (supra) upheld and approved the decisions of the ***Sri Sai Annadhatha Polymers*** (supra) and ***K.V.V. Prasad Rao Gupta*** (supra), this Court never held that two separate notices with a time-gap of thirty-days each were required under the SARFAESI Rules, more particularly, the Proviso to Rule 8(6) and Rule 9(1), respectively. What has been conveyed in so many words by this Court in ***Bafna Motors*** (supra) is that the decisions of the ***Sri Sai Annadhatha Polymers*** (supra) and ***K.V.V. Prasad Rao Gupta*** (supra) lay down the correct position of law insofar as the interpretation of the amended Section 13(8) of the SARFAESI Act is concerned, more particularly that by virtue of the amendment, the right of redemption of the borrower now stands significantly

curtailed. The relevant observations made by this Court in ***Bafna Motors*** (supra) read as under: -

> *"(vii) The decision of the Andhra Pradesh High Court in Sri Sai Annadhatha Polymers (supra) and the decision of the Telangana High Court in the case of K.V.V. Prasad Rao Gupta (supra) lay down the correct position of law <u>while interpreting the amended Section 13(8) of the SARFAESI Act</u>."*
>
> (Emphasis supplied)

164. This Court in ***Bafna Motors*** (supra) never examined the interplay between the amended Section 13(8) of the SARFAESI Act with the SARFAESI Rules, more particularly, Rule 8(6), the Proviso thereto and Rule 9(1) respectively.

165. Similarly, we fail to understand why there should be a thirty-day gap maintained between the date of the notice of sale given to the borrower under Rule 8(6), and the date the notice of sale is published in the newspaper in terms of the Proviso thereto. The notion, that a thirty-day gap ought to be maintained between the notice of sale to the borrower and the eventual publication of such notice in the newspaper, was due to the decision of this Court in ***Mathew Varghese*** (supra), which had interpreted Rule 9(1), more particularly the words "or" used in the expression "*from the date on which the*

public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 ***or*** *notice of sale has been served to the borrower*" as "and".

166. We need not dwell much on the understanding that the learned Judges had in ***Mathew Varghese*** (supra), for two good reasons, *first,* this interpretation was qua the unamended Section 13(8) of the SARFAESI Act, where reading the word "*or*" used in Rule 9(1) as "*and*" would have had no catastrophic consequences, and *secondly,* due to the subsequent decision of this Court in ***Amarender Reddy*** (supra). With the advent of the amended regime, the right of redemption of the borrower stands significantly curtailed in contrast to what was the position prior to the amendment. Before the amendment, the borrower had the right to redeem the mortgage at any time before the secured asset was transferred, but with the amended regime, the legislature has thought fit to curtail such right prior to the date when the secured asset is transferred, more particularly, at the time of "publication of notice". However, since not all modes of sale envisaged under Rule 8(5), contemplate issuance of a "public notice of sale" and service of notice of sale to the borrower is considered sufficient, Rule 9(1) would only have

effect, if the words "or" is read as it is, such that where no public notice is required, there the right of redemption would extinguish and consequently the sale can take place only on the expiry of thirty-days from the date of service of the notice of sale to the borrower.

167. Lastly, the reason behind the stipulation of time period of 30 days in Rules 8(6) and 9(1) of the SARFAESI Rules respectively is that in the former rule, once the notice of sale is served to the borrower by the secured creditor indicating its intention to sell the secured asset, the borrower should have sufficient time to try and redeem the secured asset. It is for this purpose that the period of 30 days has been stipulated. Whereas, the rationale behind the stipulation of a 30-day gap between the date of notice of auction and/or notice of sale being served and the date of actual sale is that whichever may be the mode of sale involved, a sufficient amount of time is given to the prospective purchasers, to ensure that the mode of sale fetches the maximum possible price in the least time. This is to avoid underbidding, undervaluation, collusion, fraud, inadequate pricing etc. However, there is no rationale whatsoever as to why the gap is necessary.

168. Both the objects that are sought to be achieved by the time period stipulated in Rules 8(6) and 9(1) would be fulfilled if both the notices are issued simultaneously as long as the period of 30 days is adhered to. It is for this reason the decision in ***Amarender Reddy*** (supra) held that there is no rhyme or reason why the time be maintained and thus, both the notices can be issued simultaneously. These observations become even more significant in view of the amended Section 13(8) of the SARFAESI Act as explained above. Any other view would not only be repugnant to the bare text of the SARFAESI Rules but rather would also undermine the object of enabling the expeditious recovery of loan with maximum returns.

169. From the above discussion, we have no hesitation in holding the following: -

(i) Rule(s) 8(6), the Proviso thereto, Rule 8(7) and Rule 9(1) of the SARFAESI Rules respectively do not speak of any separate or distinct notice of sale that is required to be issued by the secured creditor for the transfer of the secured asset by way of

lease, assignment or sale in accordance with any of the methods enumerated in Rule 8(5).

(ii) The different manner in which the notice of sale has to be served, caused, published, affixed, uploaded as stipulated in Rule(s) 8(6) and 8(7) of the SARFAESI Rules respectively, do not constitute separate notices of sale by themselves. They are part and parcel of one single composite intended "notice of sale" of the secured asset by the secured creditor, by any of the mode of sale listed in Rule 8(5). All of the aforesaid rules are concerned with a single composite "notice of sale", and the only distinction between the said rules, is the manner in which the said "notice of sale" has to be given, on the basis of which the relevant rule or rules are applicable, as the case may be.

(iii) Similarly, the stipulation under Rule 9(1) of a thirty-day gap between the date of publication of notice of sale and the date of actual sale does not impute a distinct characteristic to the public notice in the newspaper in contrast to the notice of sale that is served to the borrower. As is evident from Appendix IV-A to the SARFAESI Rules, the public notice of sale in

newspaper as-well the notice of sale served to the borrower are one and the same, for the purpose of Rule 9(1).

(iv) The embargo enshrined under Rule 9(1), that no sale, in the first instance shall take place before the expiry of thirty-days, would be reckoned from the date of issuance of the "notice of sale", which would include both the public notice of sale in the newspaper and the service thereof to the borrower, whichever is later.

(v) The notice of sale both under Rule 8(6) read with Rule 9(1) respectively can be served as-well as published in the newspaper, simultaneously on the same date. All that is required under Rule 9(1) is that a thirty-day gap is maintained between the date the notice of sale is served, affixed and published, whichever is later, as the case may be, till the date of actual sale.

<<

iii. What is the import of the expression "before the date of publication" used in Section 13(8) of the SARFAESI Act.

170. We turn back to the provision of Section 13(8) of the SARFAESI Act. The amended provision of Section 13(8) attaches vital importance to the date of publication of notice for public auction, invitation of

quotation or tender, or private treat, for the purpose of the right of redemption of the borrower. As per the plain language of the provision, the moment the notice for holding auction, obtaining quotation, inviting tender or conducting private treaty is "published", the borrower's right of redemption would be extinguished.

171. However, as already discussed, when the sale is undertaken by obtaining quotation or private treaty, then as per Rules 8 and 9 of the SARFAESI Act respectively, there is no requirement of publication of notice for such sale. In such circumstances, the expression "*before the date of publication*" used in the amended Section 13(8) is frustrated, insofar as the sale is being through invitation of quotations or private treaty. The language couched in the provision of Section 13(8) makes no distinction between what mode or manner of sale is adopted by the secured creditor, insofar as the application of the said provision is concerned.

172. In the foregoing part of this judgment, we have explained how for the transfer of the immovable secured asset by way of lease,

assignment or transfer, in any mode stipulated in Rule 8(5) a notice of sale is required. Rule 8(5) prescribes the different modes by which such secured asset may be transferred / sold by the secured creditor.

173. The subsequent rules, more particularly Rule 8(6), the Proviso thereto read with Rule 9(1) and Rule 8(7) respectively prescribe the manner in which the secured creditor is required to give the notice of sale for each mode of sale, enumerated in Rule 8(5). From a combined reading of these rules, it is manifest that the form and manner in which the notice of sale is required to be given would differ according to the mode of sale that is adopted.

174. We have explained that the mere difference or variation in the manner in which the notice of sale has to be given under each of the aforesaid rules, depending upon the mode of sale elected by the secured creditor, will not by itself constitute the said notices of sale, as distinct and separate. Although, the provisions under which the secured creditor is required to give the notice of sale differ, on the basis of the mode of sale chosen, and even though the manner in which they are to be given are also at variance with one another, yet

all these separate modes of effectuating the notice for sale under Rule 8(6), the Proviso thereto read with Rule 9(1) and Rule 8(7), are nothing but part and parcel of one single composite intended "notice of sale".

175. As already afore-stated, the term "notice of sale" is an umbrella term, which refers to and includes the giving of notice for sale by the secured creditor in all forms and manner that he is obliged in law to do, under the relevant SARFAESI Rules, depending upon the mode of sale elected by the secured creditor.

176. Similarly, despite the different mode or manner in which the notice of sale is to be given by the secured creditor in terms of Rule 8(6), the Proviso thereto read with Rule 9(1), and for that matter even Rule 8(7), are to be construed to refer and mean parts of a single composite notice of sale, then irrespective of the variation in the manner in which each rule contemplates the giving of such notice of sale, the discord in the language of Section 13(8) of the SARFAESI Act, more particularly, the expression "*before the date of publication*"

may be resolved, notwithstanding the absence of any actual publication of notice of sale in some modes of sale.

177. Thus, for the purpose of the amended Section 13(8) of the SARFAESI Act, the expression "*before the date of publication*" used therein, has to be construed to refer and mean the publication of a valid "notice of sale" for the secured asset, although such publication may vary depending upon the mode of sale chosen by the secured creditor.

178. The word "*publication*" used in Section 13(8) of the SARFAESI Act, has to be understood to mean and include the service, publication in newspaper, and the affixation and uploading of the "notice of sale", as may be required under the SARFAESI Rules. Wherever, the chosen mode of sale requires the secured creditor to effectuate the "notice of sale" in any or all of the aforesaid manner, as the case may be, the expiry of thirty-days as required under Rule 9(1) from the day when the secured creditor complies with the requirement of giving the notice of sale, as per the applicable rules, would be the date on which the secured creditor is said to have validly published the "notice of sale" and it would be this date on which the right of redemption of the borrower would stand extinguished.

D. <u>Whether, the Amended Section 13(8) of the SARFAESI Act is retrospective in nature</u>?

179. We now proceed to deal with the principal contention raised on behalf of the borrowers that the unamended Section 13(8) of the SARFAESI Act would apply in the present case since the loan was obtained on 06.01.2016 and that the amendment to the said provision came into effect on 01.09.2016.

180. We do not find any merit in the principal contention raised on behalf of the borrowers referred to above. The amended provision extinguishes the right of redemption of the borrower *in the event he fails to repay his dues and redeem the asset before publication of the Auction Notice*. This unambiguous language used in the amended provision of Section 13(8) furthers the object and reasons of the SARFAESI Act for which it was enacted i.e., to ensure that the lender is able to enforce his security interest at the earliest and with least possible intervention of the courts.

181. In the case on hand, indisputably, the loan account of the borrowers came to be classified as NPA on 31.12.2019. The Auction Notice was

published by the Bank on 22.01.2021 and the secured assets were successfully auctioned on 26.02.2021.

182. The Auction Sale amount was deposited on 20.03.2021 and the Sale Certificate was issued by the Bank in favour of the appellants herein on 22.03.2021.

183. In such circumstances referred to above, the right to redeem the secured asset stood extinguished on 22.01.2021. The borrowers could be said to have failed to pay the outstanding debt before the publication of the auction notice dated 22.01.23021 by which date the amended Section 13(8) of the SARFAESI Act had already come into force.

184. In the aforesaid context, we may refer to and rely upon a decision of this Court in the case of ***M.D. Frozen Foods*** (supra) wherein this Court observed that the SARFAESI Act was brought into force with the object of providing expeditious procedure for recovery of large debts in NPAs. It held that the Act applied to all the claims which were alive when SARFAESI Act was into force. Certain Non-Banking Financial Companies (NBFCs) were notified at various

dates between 2002-2016 (when judgement came). The judgement says for the NBFC it would be similarly applicable.

185. Thus, logically from the above, if the claim is alive on 01.09.16 when the Section 13(8) is amended and the notice for auction is issued after 01.09.16, then the amended section should apply otherwise an absurd situation would be created, that the Act which applied retroactively to "alive claims" prior to the Act coming into force on 2002, but the amendment in it like in Section 13(8) would apply prospectively. That would create absurd situations.

186. The SARFAESI Act intends to provide a remedy in respect of pre-existing loans and the interpretation that it would apply only to future debts would defeat the very purpose of that law, which was to reduce non-performing assets.

187. It is no more *res-integra* that the presumption against retrospective operation does not apply to the legislation merely concerned with matters of procedure or of evidence ; on the contrary, the provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament.

188. We may summarize the principles on retrospective application of legislations as under: -

(i) Presumption against retrospectivity is not applicable to enactments which merely affect procedure or change the forum or are declaratory;

(ii) Retroactive/retrospective operation can be implicit in a provision construed in the context where it occurs ;

(iii) Given the context, a provision can be held to apply to the cause of action after such provision comes into force, even though the claim on which the action may be based may be of an anterior date; and

(iv) A remedial statute applies to pending proceedings and such application may not be taken to be retrospective if application is to be in future with reference to a pending cause of action ;

(v) SARFAESI Act is a remedial statute intended to deal with problem of pre-existing loan transactions which need speedy recovery."

189. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consist of words printed on papers but conceptually, it would be a great deal more than ordinary prose. Of

the various rules guiding how a legislation should be interpreted, the one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have retrospective operation and the idea behind the rule is that a current law should govern current activities.

190. If legislation confers a benefit on some persons without inflicting a corresponding detriment on some other person or on the public generally, and such conferment appears to have been the legislators object, then the presumption would be that such legislation, giving it a purposive construction, would warrant a retrospective effect.

191. Even otherwise, as held in ***Narandas Karsondas*** (supra) and ***L.K. Trust*** (supra), the right of redemption is not a contractual right, but rather a statutory right. Such right of redemption is generally governed by the TP Act, and subject to material modification or alteration by any overriding special law in this regard. Even under the SARFAESI Act, the right of redemption has been statutorily recognized and given effect to in Section 13(8) of the SARFAESI Act, albeit subject to conditions stipulated thereunder insofar as its exercise is concerned.

192. Thus, the contention of the borrowers that their right of redemption has necessarily to be construed in accordance with the date on which the loan was obtained is completely misconceived. Any contractual terms of arrangement in respect of the loan facility obtained will have no bearing or significance in respect of application of the statutory provisions of the SARFAESI Act and the rules thereunder. Since the right of redemption under the SARFAESI Act, is nothing but a manifestation of the statutory provision.

193. In this regard, reference may be made to the decision of this Court in ***Authorized Office, Central Bank of India v. Shanmugavelu*** reported in **2024 INSC 80** wherein one of us, J.B. Pardiwala J., held that where the legislature makes a conscious departure from the general law or contractual terms by providing for a particular consequence by way of a statutory provision, then the general law or contractual terms will have no application.

VI. FINAL CONCLUSION

194. During the course of hearing, it was brought to our notice that third party rights were being attempted to be created over the secured asset by the borrower, to the prejudice and detriment of the auction purchaser herein, in order to bypass the sanctity of the auction

conducted and in a blatant disregard of the dignity of the proceedings before this Court.

195. We make it abundantly clear that if any third party rights have been created over the said secured asset, the same would be *non-est* in view of this judgment. If at all we come to learn about any obstruction or resistance in handing over of the possession of the secured asset to the auction purchaser herein, either at the behest of the borrower or anyone else, we will proceed to take the strictest of actions against such person.

196. Before we close this judgment, we would like to say something as regards the litigation which has unfolded before us. The RDBFI Act was the first legislative enactment that came into force in 1993. It was brough in order to facilitate expeditious recovery of debts by the bank, in order to ensure adequate liquidity and an overall healthy growth-oriented economy.

197. However, due to the continuing rise in number of non-performing assets and a pathetically poor rate of loan recovery, the SARFAESI Act was enacted. The SARFAESI Act was envisioned as a watershed legislation and a panacea to the failure of the existing legislation in addressing the major problems that were being faced by the banks

and financial institutions in India with respect to the recovery of bad debts, by introducing enforcement of debt without intervention of courts through securitisation and asset reconstruction, a need highlighted by several committees. Various amendments have been made to the SARFAESI Act over the years to ensure that the Act continues to be potent in bringing about meaningful change to the poor credit culture prevailing in the country and put a check on the debt evasive acts of scrupulous borrowers.

198. It has been almost twenty-three years, since the SARFAESI Act has been in force. It is indeed very sad to note that even after these many years the procedural issues such as the one involved in the case in hand, has continued to plague the legislation.

199. Despite several amendments, the glaring anomaly that we have discussed in respect of Section 13(8) of the SARAFESI Act and Rule(s) 8 and 9 of the SARFAESI Rules still persists. The same renders the very mandate of the provision otiose.

200. We are, however, dismayed to note how the ill-wording of Section 13(8) of the SARFAESI Act has resulted in a glaring inconsistency between the aforesaid provision and the SARFAESI Rules framed in

lieu thereof. It is unfortunate that the ambiguities within the statutory provisions of the SARFAESI Act and Rules thereunder have left the interests of secured creditors and auction purchasers high and dry. The interpretative deadlock between the provision and the rules has single handedly resulted in a huge mess insofar as the enforcement of security interest is concerned., leading to an endless pipeline of litigation thereby clogging the specialized forums of the DRT and DRAT, that are expected to expeditiously decide matters of recovery of debt.

201. We humbly urge the Ministry of Finance, Union of India to take a serious look at these provisions and bring about necessary changes, before it is too late in the day.

202. In the result, both the appeals succeed and are hereby allowed. The impugned judgment and order passed by the High Court is hereby set aside. The pending applications if any shall stand disposed of.

203. The Registry shall forward one copy each of this judgment to all the High Courts across the country and also to the Principal Secretary,

Ministry of Finance and the Principal Secretary, Ministry of Law & Justice, Union of India.

..... J.
(J.B. Pardiwala)

..... J.
(R. Mahadevan)

New Delhi;
22nd September, 2025.