2024 INSC 978

REPORTABLE

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

CONTEMPT PETITION (C) NOS. 158-159 OF 2024

IN

CIVIL APPEAL NOS. 5542-5543 OF 2023

CELIR LLP ...PETITIONER(S)

VERSUS

MR. SUMATI PRASAD BAFNA & ORS. ...RESPONDENT(S)

WITH

M.A. NOS. 600-601 OF 2024

IN

CIVIL APPEAL NOS. 5542-5543 OF 2023

J U D G M E N T

J.B. PARDIWALA, J.:

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

INDEX

A. FACTUAL MATRIX 3

i. Facts leading upto the Decision of this Court in Civil Appeal Nos. 5542-5543 of 2023. 3

ii. Developments during the pendency of Civil Appeal Nos. 5542-5543 of 2023. 10

iii. Subsequent Developments and the Acts alleged to be in contempt thereof. 13

B. SUBMISSIONS OF THE PARTIES 20

i. Submissions of the Successful Auction Purchaser / the petitioner. 20

ii. Submissions of the Borrower / the respondent no. 1. 28

iii. Submissions of the Subsequent Transferee / respondent nos. 2 & 4. . 38

iv. Submissions of the Bank / the respondent no. 3. 45

C. ISSUES FOR DETERMINATION 49

D. ANALYSIS 50

i. Concept of Abuse of Process of Court and Collateral challenge to judgments that have attained finality. 50

a. The Decision of this Court in Celir LLP v. Bafna Motors & Ors. (2023 INSC 838) and the Scope of challenge before it. 77

b. The 'Henderson' Principle as a corollary of Constructive Res- Judicata. 83

ii. Applicability of Lis Pendens in the absence of any registration as required under the State Amendment to Section 52 of the TPA. 104

iii. Whether any contempt is said to have been committed by the respondents herein? 121

iv. Circumstances when a sale of property by auction or other means under the SARFAESI Act may be set-aside after its confirmation. . 138

E. FINAL ORDER 146

1. Since the issues raised in both the captioned petitions are same and the parties are also the same, they were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. The present petitions have been filed under Section 2(B) of the Contempt of Court Act, 1971 (for short, the "**Act, 1971**") read with Article(s) 129 and 142(2) of the Constitution respectively seeking to initiate contempt proceedings against the respondents / alleged contemnors for wilful disobedience of the final judgment and order dated 21.09.2023 passed by this Court in Civil Appeal Nos. 5542-5543 of 2023 respectively captioned as '***Celir LLP v. Bafna Motors (Mumbai)***'.

3. For the sake of convenience, we clarify that the petitioner herein is the successful auction purchaser, the respondent no. 1, Mr. Sumati Prasad Bafna is the original borrower (hereinafter referred to as the '**Original Borrower**'), the respondent no. 4 'Greenscape IT Park LLP' and its director, Mr. Jayesh A. Vavia i.e., the respondent no. 2 herein are the subsequent transferee / third-party purchaser (hereinafter referred to as the '**Subsequent Transferee**') and the respondent no. 3, 'Union Bank of India' is the secured creditor / bank (hereinafter referred to as the '**Bank**').

A. FACTUAL MATRIX

i. Facts leading upto the Decision of this Court in Civil Appeal Nos. 5542-5543 of 2023.

4. The Original Borrower herein had availed credit facility from the Bank. Accordingly, the Bank on 03.07.2017 sanctioned Lease Rental Discounting (for short, 'the LRD') credit facility to the tune of Rs. 100 crore in favour of the Borrowers. The Bank vide its letter dated 02.01.2020 further sanctioned an additional amount of Rs. 6.77 Crore towards the said LRD term loan.

5. Against the aforesaid term loan, a simple mortgage was created over a parcel of land admeasuring 16200 sq. metres having buildings and ancillary structures on it at plot Nos. D-105, D 110 and D-111 respectively situated at the Trans Thane Creek Industrial Area MIDC Village Shirwane, Thane, Belapur Road, Nerul, Navi Mumbai, Thane, Maharashtra (hereinafter referred to as the "**Secured Asset**") belonging to the Borrower vide a Mortgage Deed dated 28.01.2020 in lieu of the sanctioned credit.

6. The Borrower defaulted in repayment of the said loan amount and accordingly on 31.03.2021 the Borrower's LRD Term Loan Account was declared as a Non-Performing Asset (NPA).

7. The Bank on 07.06.2021 issued a demand notice under Section 13 sub-section (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short, the '**SARFAESI Act**') for repayment of the principal amount along with interest, cost, charges, etc. As of 30.04.23, an aggregate sum of Rs. 123.83 crore was due and payable by the borrowers to the Bank.

8. Owing to the failure of the Borrower & the guarantor in repaying the outstanding amount referred to above, the Bank proceeded to take measures for possession of the Secured Asset under the SARAFESI Act. The Bank on 04.02.2022 issued a possession notice under Section 13(4) read with Rule 8 of the Security Interest (Enforcement) Rules, 2002 (for short, the "**SARFAESI Rules**") to the Borrower and took symbolic possession of the Secured Asset.

9. Aggrieved by the aforesaid, the Borrower preferred a Securitization Application being S.A. No. 46 of 2022, under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal (for short, the '**DRT**'), assailing the aforesaid notice dated 07.06.2021 under Section 13(2), and the notice dated 04.02.2022 under Section 13(4), by the Bank, classifying the Borrower's Account as an NPA and taking symbolic possession of the Secured Asset, respectively.

10. In the meantime, the Bank decided to put the Secured Asset to auction. On 25.03.2022, the Bank issued a notice of sale of the Secured Asset by way of a public auction slated for 29.04.2022, however, the said sale / auction failed on account of no bids being received. It appears that between April 2022 & June 2023, the Bank attempted eight auctions but all failed.

11. It appears that the borrowers informed the Bank that they were trying to sell the secured asset but were not getting good offers. The borrowers informed the Bank that the maximum they might be able to fetch from the sale of the secured asset would be around Rs. 91-92 crore and they were willing to settle the entire account by offering such amount to the Bank.

12. The Bank however decided to go for one more auction. On 14.06.2023, the Bank published the notice of sale in terms of Rule 8(6) of the SARFAESI Rules for the 9th time. The public auction was scheduled to be conducted on 30.06.2023. The terms of the aforesaid notice of sale, *inter-alia* stipulated that the Secured Asset would be sold on '*as is what is and whatever there is basis*' at a reserve price of Rs. 105 crore and that the said auction would be subject to the outcome of the S.A No. 46 of 2022 pending before the DRT. The relevant terms and conditions of the aforesaid e-auction specified in the notice of sale dated 12.06.2023 read as under: -

"TERMS AND CONDITIONS OF SALE OF IMMOVABLE SECURED ASSETS:

"19. The Authorized Officer will deliver the property on the basis of Symbolic possession taken on as is where is basis to the purchaser free from encumbrances, known to the Secured Creditor on deposit of money by the purchaser towards the discharge of such encumbrances.

xxx xxx xxx

26, The above movable / immovable secured assets will be sold in "As is where is", "As is What is" and "whatever there is" condition.

xxx xxx xxx

29. The sale is subject to outcome of S.A No. 46/2022 pending before DRT, Mumbai."

13. The Borrower herein on 26.06.2023 preferred two applications before the DRT being I.A. No. 2253 of 2023 and I.A. No. 2254 of 2023 in S.A. No. 46 of 2022, respectively *inter-alia* seeking to amend amending its pleadings for the purpose of challenging the 9th auction proceedings and for seeking stay of the said auction in the meantime, respectively.

14. Pursuant to the 9th notice of sale, the auction proceedings were conducted on 27.06.2023. The petitioner herein participated in the same and submitted its bid of Rs. 105.05 crore, along with a deposit of Rs. 10.5 crore as earnest money.

15. In the said 9th auction conducted by the Bank, the petitioner herein was declared as the highest bidder. The Bank on 30.06.2023 vide its email sent a "Sale Confirmation Letter" to the petitioner, declaring him as the highest bidder / H1 in the auction of the secured asset and called upon the petitioner.

to deposit 25% of the bid amount by 01.07.2023 and the balance amount on or before 15.07.2023.

16. On 01.07.2023, the petitioner as per the terms and conditions of the auction notice deposited an amount of Rs, 15,76,25,000/- (INR Fifteen Crore Seventy-Six Lac Twenty-Five Thousand) as 25% of the total sale consideration to the Bank, excluding the EMD already paid.

17. The Borrower realizing that the 9th auction being successful and that the Secured Asset was likely to be sold off, it hurriedly filed an Interlocutory Application bearing No. 2339 of 2023 in the S.A. No. 46 of 2022 on 05.07.2023, seeking to redeem the mortgage created over the Secured Asset by paying of the total outstanding sum of Rs. 123.83 crore (approx..) in lieu of the LRD Term Loan. Over the next few weeks, the aforesaid application was taken up by the DRT and both the Bank and the Borrowers were heard at length, but no consequential orders were passed.

18. On 27.07.23, the petitioner herein deposited the balance sum of the total bid amount which was duly received and accepted by the Bank. On the very same day, the redemption application referred to above was also heard by the DRT. The redemption application was opposed by both the petitioner herein as well as the Bank. The DRT after hearing the parties at length, reserved orders to be pronounced on 02.08.23.

19. While the parties were awaiting for the DRT to pass an appropriate order on the redemption application, the borrowers went to the High Court and filed the Writ Petition No. 9523 of 2023, *inter-alia* **i)** challenging the demand notice dated 07.06.2021 and the measures taken by the Bank under the SARFAESI Act more particularly the possession notice dated 04.02.2022 and the initial sale / auction notice dated 25.03.2022 **AND ii)** further seeking directions to the Bank to permit them to redeem the mortgage of the secured asset. The writ petition was filed on the premise that the Borrowers had strong apprehension that the DRT may reject their redemption application and the entire matter would become infructuous more particularly, as the Bank had accepted the entire amount of the bid from the petitioner herein towards the sale consideration. The relevant prayers sought by the Borrowers in the aforesaid writ petition are reproduced hereunder: -

> *"**11. THE PETITIONERS, THEREFORE, PRAY:***
> *(a) That this Hon'ble Court be pleased to issue Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ, calling upon the papers and proceedings of the Securitization Application No. 46 of 2022 pending before the Hon'ble DRT I, Mumbai and after examining the legality, validity and propriety thereof, be pleased to allow the Petitioners to redeem the mortgage as per schedule provided in the Interim Application No. 2339 of 2023 filed before the Hon DRT I, Mumbai or within such reasonable period as this Hon'ble Court may deem fit and proper;*
>
> *(b) That this Hon'ble Court be pleased to direct the Respondent to issue "No Dues Certificate" and release All piece and parcel of leasehold land to the extent of 16200 sq. mtrs*

various buildings and ancillary structures at amalgamated plot no. D-105, D-110 and D-111, Trans Thane Creek Industrial Area, MIDC, Village Shirwane, Thane- Belapur Road, Navi Mumbai, Dist- Thane, Maharashtra, 400706, after getting the entire redemption amount;

(c) *In the alternate, that this Hon'ble Court be pleased to direct the Respondent not to take any further steps for issuance of the sale Certificate by confirming the sale until the hearing and final disposal of the Securitization Application No. 46 of 2022 pending before the Hon'ble DRT I, Mumbai;"*

(Emphasis supplied)

20. Interestingly, the Borrower herein never challenged the legality or propriety of the 9th Auction that was conducted by the Bank in the aforesaid writ petition before the High Court of judicature at Bombay. Although, in the aforesaid writ petition, the Borrower had itself stated that the 9th notice of sale was published on 12.06.2023 and auction thereto was conducted on 30.06.2023, yet far from imputing procedural impropriety as regards the valuation of the Secured Asset in the said 9th Auction, no challenge was ever made to the manner in which the notice of sale dated 12.06.2023 came to be issued i.e., there was no challenge to the validity of the said notice. We shall discuss the pleadings of the Borrower herein and the scope of proceedings before the High Court in more detail in the latter part of this judgment.

21. Before the High Court, the Borrowers expressed their willingness to pay a total sum of Rs. 129 crore for redeeming the mortgage by 31.08.2023. The Bank which had earlier opposed the plea for redemption of mortgage before

the DRT for some good reason expressed its willingness before the High Court to accept the offer of the borrowers. The Bank perhaps got lured by the fact that the borrowers were paying almost Rs. 23.95 crore more than what was paid by the petitioner herein and Rs. 5 crore more than the outstanding amount.

22. In the wake of such development, the petitioner herein having come to know about the aforesaid proceedings before the High Court preferred Interim Application (ST) No. 21706 of 2023 for being impleaded in the writ petition.

23. The writ petition along with interim application was heard by the High Court and vide its judgment and order dated 17.08.2023 allowed the writ petition and permitted the borrowers to redeem the mortgage of the secured asset subject to payment of Rs. 25 crore on the same day and the balance amount of Rs. 104 crore on or before 31.08.2023, failing which the sale of the Secured Asset in favour of the petitioner herein would be confirmed.

ii. <u>Developments during the pendency of Civil Appeal Nos. 5542-5543 of 2023</u>.

24. Aggrieved by the aforesaid, the petitioner herein preferred Special Leave Petition Nos. 19523-19524 of 2023 (later renumbered as Civil Appeal Nos. 5542-5543 of 2023) before this Court, challenging the final judgment and

order dated 17.08.2023 passed by the High Court. The aforesaid Special Leave Petitions were instituted on 21.08.2023 and it is pertinent to note that there was a caveat at the end of the Borrower herein, and thus the Borrower was fully aware of the aforesaid Special Leave Petition pending before this Court.

25. On 25.08.2023, the aforesaid special leave petitions were taken up for hearing by this Court for the first time and the Borrower herein was also present during the hearing through his counsel. However, since the judgment and order dated 17.08.2023 passed by the High Court was not made available, this Court vide its order dated 25.08.2023 adjourned the matter to 01.09.2023. It is material to note that there was no interim stay or status quo operating between the parties.

26. On 26.08.2023, the judgment and order dated 17.08.2023 passed by the High Court was uploaded and made available to the parties, and the Borrower pursuant to the said order of the High Court transferred a sum of Rs. 104 crore to the Bank for redeeming its mortgage.

27. The Bank on 28.08.2023 issued a 'No Dues Certificate' to the Borrower, and a Release Deed was executed between the parties for discharge of the mortgage over the Secured Asset, upon which the original title deeds and

related documents were returned to the Borrower. It appears from the material on record that there was a second charge created over the said Secured Asset in favour of one Tata Motors Financial Solutions Ltd. which came to be released pursuant to payment of Rs. 15 crore by the Borrower on the same date vide a Dead of Release registered before the Joint Sub Registrar, Thane 8 having Registration No. 19283 of 2023.

28. On the very same day i.e., 28.08.2023, the Borrower entered into an Agreement of Assignment of Leasehold Rights with a third-party viz. M/s Greenscape I.T. Park LLP i.e., the Subsequent Transferee herein for the transfer of leasehold rights in the Secured Asset. The said agreement was registered before the Joint Sub Registrar, Thane 8 vide Registration No. 19286 of 2023, and franking was completed on the same date.

29. On 01.09.2023, the aforesaid special leave petitions were taken up for hearing. After the arguments from both sides were concluded, leave to appeal was granted, and the matter came to be reserved for judgment by this Court. The parties were further directed to file their written submissions.

30. This Court vide its final judgment and order dated 21.09.2023 in Civil Appeal Nos. 5542-5543 of 2023 *inter-alia* held that the High Court erred in permitting the Borrower to redeem the mortgage after publication of the notice of sale / auction under Rule 9 sub-rule (1) of the SARFAESI Rules.

Accordingly, the High Court's order dated 17.08.2023 was set-aside. Furthermore, in light of the willingness expressed by the petitioner to make good the difference between the total outstanding dues and the bid amount submitted by him, this Court directed the petitioner to pay an additional amount of Rs. 23.95 crore to the Bank within a period of one week from the date of pronouncement, upon which the Bank was to issue the sale certificate for the Secured Asset in accordance with Rule 9(6) of the SARFAESI Rules. The Bank was further directed to refund the entire amount paid by the Borrower towards redemption of the mortgage of the Secured Asset upon receipt of the balance amount from the petitioner herein.

iii. <u>Subsequent Developments and the Acts alleged to be in contempt thereof</u>.

31. On 26.09.2023, the Borrower preferred a review against the aforesaid final judgment and order dated 21.09.2023 passed by this Court in Civil Appeal Nos. 5542-5543 of 2023 being R.P. (C) Nos. 611-612 of 2024. On 27.09.2023, the petitioner herein paid the remaining amount of Rs. 23.95 crore in terms of the aforesaid judgment of this Court whereupon Sale Certificate for the Secure Asset came to be issued by the Bank.

32. It is alleged that the Bank on the very same day addressed one letter to the Borrower requesting for the cancellation of the Release Deed dated

28.08.2023 and for returning the original title deeds to the Secured Asset in order to refund the amount paid towards redemption of the mortgage. However, the Borrower on the other hand disputed the receipt of the aforesaid letter. Nevertheless, the Bank on 18.10.2023 addressed one another letter calling upon the Borrower to execute a Deed of Cancellation of the aforesaid Release Deed and to handover the original title documents of the Secured Asset.

33. Thereafter, the petitioner herein sent several reminders to the Bank *inter-alia* to handover the physical possession of the Secured Asset along with its original title deeds. The Bank in response reiterated from time to time that it was actively taking steps for the purchase of complying with the directions passed by this Court in its judgment dated 21.09.2023 in Civil Appeal Nos. 5542-5543 of 2023. It further informed that it had filed an application under Section 14 of the SARFAESI being S.A. No. 787 of 2023 for obtaining physical possession of the Secured Asset, and that the said application was pending before the District Magistrate, Thane, Mumbai.

34. In the interregnum, the Borrower filed I.A. No. 3220 of 2023 in S.A. No. 46 of 2022 for amendment of pleadings in the securitization application *inter-alia* for the purpose of: -

i) Bringing on record the subsequent development that had taken place;

ii) For challenging the Notice of Sale dated 12.06.2023 on the ground of want of a 30-days period between the date of issuance of the notice of sale and the date of auction in terms of Rule 8(6) and 9(1) of the SARFAESI Rules respectively;

iii) Praying to set aside the auction dated 30.06.2023 of the Secured Asset conducted by the Bank upon examination of the validity and propriety of all measures taken by the Bank in terms of Section 13(4) of the SARFAESI Act and Rule 8 and 9 of the SARFAESI Rules respectively.

35. Several more correspondences took place between the petitioner and the Bank herein for handing over of possession and title deeds to the Secured Asset, however they were to no avail. The Bank reiterated its helplessness in providing the aforesaid owing to the non-cooperation of the Borrower and the Subsequent Transferee. In view of the above, the petitioner herein issued a legal notice dated 29.12.2023 to all the respondents herein, calling upon them to (a) handover the physical possession of the Secured Asset along with its original title deeds and (b) to take steps towards cancelling the Release Deed dated 28.08.2023. In response to the above, the Borrower herein vide its letter dated 16.01.2024 *inter-alia* stated that since the Secured Asset stood transferred to the Subsequent Transferee, it had no role to play in handing over of the possession or the original title deeds of the same. Whereas, the Bank vide its Reply dated 23.01.2024 stated that as per the terms of the auction, the Bank was obliged only to provide the symbolic possession of the Secured Asset which had already been delivered. It further assured that the Bank was exploring all options for handing over the original title deeds. In

regards to the physical possession, the Bank informed that it had already filed an application under Section 14 of the SARFESI Act, which was still pending and that until appropriate orders were passed, it was not possible to handover the physical possession of the Secured Asset.

36. On the other hand, the Subsequent Transferee upon receipt of the aforesaid legal notice, instituted a suit being the Special Civil Suit No. 5 of 2024 against the petitioner *inter-alia* seeking a declaration that (a) they are the owners and title-holder of the Secured Asset; (b) the Assignment Agreement dated 28.08.2023 is legal and valid and (c) they are entitled to the physical possession of the Secured Asset. It has been alleged that the Subsequent Transferee was constrained to prefer the above suit, as the petitioner herein had attempted to take forceful possession of the Secured Asset. The Bank on 16.01.2024 filed an application in the aforesaid suit for rejection of plaint under Order VII, Rule 11 of Code of Civil Procedure, 1908 (for short, the "**CPC**").

37. The District Magistrate vide its order dated 02.02.2024 in S.A. No. 787 of 2023 allowed the Banks' application under Section 14 of the SARFAESI and the Tehsildar, Thane was appointed to take physical possession of the Secured Asset and the document relating thereto. Pursuant to the aforesaid, the Tehsildar, Thane on 14.02.2024 issued a notice of possession stipulating

that in the event the Subsequent Transferee does not handover physical possession of the Secured Asset and the original title deeds within 15-days, then the possession shall be taken over forcefully with the assistance of the local police.

38. In light of the above, the Borrower herein preferred a Securitization Application under Section 17 of the SARFAESI Act for seeking stay of the aforesaid notice of possession dated 02.02.2024 and restraining the Bank from taking any further coercive steps in this regard, even though, it had earlier taken the stance that since the Secured Asset stood transferred by him to the Subsequent Transferee it had no role or any concern with the handing over of the physical possession. Thus, while the Borrower on one hand is remarkably contending that it has nothing to do with the failure in handing over of the Secured Asset yet in the same breath, he is purposefully engaging in various acts to subvert any and all attempts of the petitioner and the Bank herein to regain the physical possession.

39. In the suit proceedings, on an application filed by the Subsequent Transferee the Civil Court, Belapur vide its order dated 05.02.2024, directed that *status quo* be maintained and restrained the Bank from taking any steps towards obtaining the physical possession of the Secured Asset till it filed its written statement.

40. The DRT vide its order dated 28.02.2024 observed that since the decision of this Court in the Civil Appeal Nos. 5542-5543 of 2023 had allowed the sale in favour of the petitioner, the act of the borrower to continue claiming a right to the Secured Asset on the strength of the Release Deed dated 28.08.2023 was highly deplorable. Accordingly, the DRT refused to grant stay of the notice of possession and dismissed the Borrower's IA No. 456 of 2024 in S.A. No. 53 of 2024.

41. The Borrower preferred an appeal against the aforesaid order being Misc. Appeal (D) No. 429 of 2024 before the Debts Recovery Appellate Tribunal, Mumbai (for short, the "**DRAT**"). It appears from the material on record that the DRAT vide its order dated 29.02.2024 granted *status quo* and deferred the proceedings for physical possession, and further directed the Bank to deposit Rs. 129 crore paid by the Borrower before it, in contrast to the order of this Court in Civil Appeal Nos. 5542-5543 of 2023 wherein the said amount was ordered to be refunded in clear terms.

42. On 01.03.2024, the present contempt petition came to be filed before this Court seeking initiation of contempt proceedings against the respondents for wilful disobedience of this Court's order in Civil Appeal Nos. 5542-5543 of 2023 and further praying for **i)** handing over of the physical possession and original title deeds to the Secured Asset, **ii)** annulment of the Release Deed, the No Dues Certificate and the Deed of Assignment in favour of the

Subsequent Proceedings and **iii)** the quashing of all proceedings pending in respect of the Secured Asset before the DRT, DRAT and the suit proceedings of the Subsequent Transferee.

43. It further emerges from the materials on record that in the suit proceedings the Civil Court, Belapur vide its order dated 05.03.2024 rejected the Bank's application under Order VII, Rule 11 of the CPC and further extended the *status quo* granted earlier.

44. In the wake of such developments, the Bank on 12.03.2024 filed a miscellaneous application before this Court being M.A. No. 600 of 2024 in Civil Appeal Nos. 5542-5543 of 2023 seeking directions to the Borrower herein to handover the physical possession of the Secured Asset and all original title deeds related thereto in compliance of the decision of this Court in the Main Appeals.

45. The Borrower filed two applications in its Review Petitions that were pending before this Court being I.A. No. 92135 of 2024 and I.A. No. 92136 of 2024 in R.P. (C) Nos. 611-612 of 2024 respectively seeking permission to file additional grounds for review and for open court hearing. The aforesaid Review Petitions along with the interlocutory applications against the Main Appeals came to be dismissed by this Court vide its order dated 18.07.2024.

46. In such circumstances referred to above more particularly the dubious actions of the respondents and the subsequent development that have taken place after the decision of this Court in the Main Appeals, the petitioner is here before this Court with the present contempt petitions.

B. SUBMISSIONS OF THE PARTIES

i. Submissions of the Successful Auction Purchaser / the petitioner.

47. Mr. Mukul Rohatgi and Mr. Neeraj Kishan Kaul, the learned Senior Counsel appearing for the petitioner submitted that this Court in its decision rendered in the Main Appeals had looked into all the issues at hand regarding the auction and the subsequent transfer, and thereafter had taken a conscious decision to uphold the auction conducted in favour of the petitioner and directed the Bank to issue the Sale Certificate and handover possession of the Secured Asset. However, despite such categorical directions of this Court, till date neither the physical possession nor the original title deeds to the Secured Asset has been handed over by the respondents herein to the petitioner.

48. It was submitted that the petitioner herein as per the directions of this Court had paid an additional amount over and above the bid submitted by it, to the tune of Rs. 24 crore approx. to match the difference between the sale

consideration and the amount towards redemption of the mortgage, which the petitioner duly complied with. In such circumstances, the petitioner placing reliance on para 98 of the decision in the Main Appeals, submitted that once the entire bid price is paid and there is no stay granted by any forum known to law, the secured creditor is duty bound to issue a valid sale certificate and handover the physical possession of the secured asset.

49. It was further submitted that the Borrower and the Subsequent Transferee have not only refused to hand over the possession and original title deeds to the Secured Asset in complete defiance of the decision in the Main Appeals but have also resorted to frivolous and malicious proceedings before various forums to undermine and circumvent the decision of this Court. It was highlighted that inasmuch as three different proceedings have been instituted by the respondents for seeking prayers which are in teeth of the decision of this Court in the Main Appeals. The details are as under: -

i. Securitization Application No. 46 of 2022 along with I.A. Nos.3199 of 2023 & 3220 of 2023 before the DRT-I, Mumbai.
ii. Securitization Application No. 53 of 2024 along with I.A. No. 456 of 2024 before the DRAT, Mumbai
iii. Special Civil Suit No. 5 of 2024 before the Civil Court, Belapur.

50. It was submitted that the above acts of abject refusal to comply with the directions passed in the Main Appeals and the act of initiation of proceedings

in different forums with prayers contrary to the decision of this Court by the respondents, constitutes contempt in itself.

51. It was further submitted that the acts of the Borrower and the Subsequent Transferee to immediately enter into the Assignment Agreement after redeeming the mortgage of the Secured Asset had been done only to undermine the authority of this Court. The contention of the respondents that they were well within their rights to enter into the above transaction since there was no stay or prohibitory order by this Court is patently erroneous and devoid of merit. It was submitted that on the first day of hearing since the impugned order of the High Court was not available, no effective hearing took place and as such this Court had no occasion to grant or refuse stay. It was further submitted that it is not the case that the respondents were unaware of the pendency of the Main Appeals before this Court at the time of entering into the Assignment Agreement, rather the only reason why the respondents showed undue haste in entering the aforesaid agreement was because they were well aware of the proceedings pending before this Court. Thus, the conduct and actions of the respondents are highly deplorable and cannot be termed to be *bona fide* or in good conscience.

52. It was also submitted that after the decision of this Court in the Main Appeals, both the Borrower and the Subsequent Transferee herein committed several acts of contempt in order to circumvent the judgment and order of this Court

more particularly the direction to issue the Sale Certificate and complete the sale in respect of the Secured Asset, being as follows: -

(i) The Subsequent Transferee vide its letter dated 05.10.2023 asked the Sub-Registrar Office, Nerul Thane to not entertain any request of the petitioner regarding the transfer of the Secured Asset.

(ii) The Borrower on 12.10.2023 addressed one letter to the Chief Executive Officer of the Maharashtra Industrial Development Corporation in whose industrial area the Secured Asset was situated, *inter-alia* requesting them to not entertain any request from the Bank or the petitioner regarding the transfer of the leasehold rights of the Secured Asset in favour of the petitioner.

(iii) Similarly, the Subsequent Transferee vide its letter dated 17.10.2023 asked the Executive Officer of the Maharashtra Industrial Development Corporation to not take any action regarding the transfer of the Secured Asset to the petitioner.

(iv) In November, 2023, the Borrower filed I.A. No. 3220 of 2023 in S.A. No. 46 of 2022 to amend the securitization application for *inter-alia* challenging the issuance of sale certificate by the Bank as directed by this Court on the ground that such issuance is contrary to the provisions of the SARFAESI Act, as the property no longer vested with the Bank in view of the No Dues Certificate and the Release Deed

that was executed during the pendency of the Main Appeal, and that the Bank deliberately suppressed this fact from this Court.

(v) On 05.01.2023, the Subsequent Transferee filed Special Civil Suit No. 5 of 2024 *inter-alia* for seeking a declaration that it is the rightful owner of the property, as the Sale Certificate issued to the petitioner does not confer ownership right and title in respect of the property by contending that this Court in its decision in the Main Appeals did not declare either directly or indirectly that the sale transaction in its favour is void or not binding. It has further contended in its plaint that the interpretation of this Court as to the right of redemption of the Borrower in the Main Appeals cannot be applied post-exfacto to the sale executed in its favour so as to declare the transaction as invalid.

(vi) That the Borrower in its response dated 16.01.2024 to the petitioner's legal notice outrightly refused to handover the physical possession and the original title deeds to the Secured Asset by contending that it no longer had any role to play or authority over the property in view of its transfer to the Subsequent Transferee. However, when the Tehsildar, Thane in pursuance of the Bank's application for obtaining physical possession of the Secured Asset issued a notice to the Subsequent Transferee, the Borrower filed an application for seeking a stay of the same.

(vii) That the Subsequent Transferee on 17.01.2024 also sought for registration of FIR against the Bank and the petitioner herein *inter-alia* alleging that the Bank had been falsely claiming that this Court in its decision in the Main Appeals had directed the refund of the amount paid towards redemption of mortgage to the Borrower and to transfer the vacant possession of the Secured Asset to the petitioner, and that the Bank in collusion with the petitioner had issued the sale certificate to the Secured Asset despite having executed the Release Deed for the mortgage and the pending litigation before the DRT.

53. In light of the above, it was contended by the petitioner that both the Borrower and the Subsequent Transferee have been acting in tandem with each other to frustrate the implementation of the decision of this Court in the Main Appeals by misleading various authorities and by mischievously instituting proceedings before different forums & thereby thwart any attempt of the petitioner and the borrower to obtain physical possession and original title deeds to the Secured Asset.

54. As regards the contention of the respondents on the issue of auction that was conducted by the Bank being illegal and contrary to the statutory provisions , it was submitted on behalf of the petitioners that the requirement under Rule 8(6) read with Rule 9(1) to maintain a 30-day gap between the notice to the

borrower and the notice of sale is mandatory only for the first auction. Placing reliance on the Proviso to Rule 9(1) it was submitted that for any subsequent auctions after the first auction fails, only 15-days' time period is required between the notice of sale and the date of auction.

55. It was submitted that in the present case, since the Bank had already conducted a total of 8 auctions prior to the auction in which the petitioner emerged as the successful bidder, the same only required a 15-days' statutory notice period. As the notice of sale for the 9th auction was published on 12.06.2023 and the ultimate auction held on 30.06.2023, the statutory 15-day time period was duly maintained. Thus the 9th auction was in due compliance of the statutory requirements and constituted a valid sale.

56. Reliance was also placed on the decision of this Court in ***Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd. & Ors***, reported in **(2008) 9 SCC 299** to canvass that a sale by way of public auction cannot be set aside until there is any material irregularity and/or illegality committed in holding the auction or if such sale was vitiated by any fraud or collusion.

57. It was further submitted on behalf of the petitioner that at no point before the DRT or DRAT did the Borrower contend that there was any material irregularity or fraud in connection with the 9th auction that was conducted by

the Bank or the sale of the Secured Asset arising therefrom. Even in the Main Appeals before this Court, it was never the case of the Borrower that the 9th Auction was invalid or illegal and that no pleadings to this effect were made by the Borrower before this Court.

58. In such circumstances, it was submitted that the stance taken by the Borrower in the S.A No. 46 of 2022 and S.A. No. 53 of 2024 respectively after the decision of this Court in the Main Appeals is unscrupulous and self-serving. It was further pointed out that the Borrower in the Assignment Agreement with the Subsequent Transferee had provided an undertaking to withdraw the aforesaid S.A No. 46 of 2022. Thus, in view of the aforesaid coupled with the fact that the Borrower never questioned the validity of the 9th auction in the Main Appeals, it was submitted that the Borrower had waived of its right under the SARFAESI Act and is now estopped from challenging the legality of the recovery measure taken by the Bank and the consequent 9th Auction conducted by it. In this regard, the petitioner relied upon the decision of this Court in ***Arce Polymers Private Limited v. Alphine Pharmaceuticals Private Limited & Ors.***, reported in **(2022) 2 SCC 221** to contend that if the party relinquishes its right under the SARFAESI Act, then the Borrower is not entitled to subsequently challenge the actions or measures taken under it.

59. In the last, it was submitted that the Sale Certificate of the Secured Asset that was issued by the Bank in favour of the petitioner was never contingent upon

or subject to the outcome of the proceedings before the DRT, more particularly S.A. No. 46 of 2022, as this Court in the Main Appeals had upheld the auction and crystalized the rights of the petitioner over the Secured Asset. Placing reliance on paragraph 98 of the Main Appeals, it was contended that once the Sale Certificate is issued, the bank is bound to hand over the physical possession of the property and as such, this Court had concluded the rights of all parties and that nothing remained in S.A. No. 46 of 2022 after the decision of this Court.

ii. <u>Submissions of the Borrower / the respondent no. 1</u>.

60. Dr. A.M. Singhvi the learned Senior Counsel appearing for the Borrower submitted that this Court in its decision in the Main Appeals only decided the issue of interpretation of Section 13(8) of the SARFAESI Act, and rightly chose not to decide either the validity of the 9th auction process or to interfere with the proceedings emanating from S.A. No. 46 of 2022 that was pending before the DRT.

61. He further submitted that since the terms of the auction more particularly clause 29 therein specifically stipulated that the auction is subject to the outcome of the proceedings in S.A. No. 46 of 2022 pending before the DRT, this Court rightly never decided the validity of the auction proceedings and left it for the DRT to decide.

62. It was submitted that in the Main Appeals, this Court held that writ jurisdiction ought not to have been invoked by the Borrower having already availed the statutory remedy and rightly did not decide the issue of validity of the auction conducted by the Bank as such remedy was available to the Borrower to avail in the S.A. No. 46 of 2022 pending before the DRT.

63. It was also submitted that the issues involved in the S.A. No. 46 of 2022 as to the validity of the measures taken by the Bank under the SARFAESI Act, is still pending and to this date no court or judicial authority has examined the same, and any interference with the said proceedings would render the Borrower remediless and infringe its rights under Article 21 and 300A of the Constitution. It was further submitted that this Court ought not to decide the validity of such measures in view of the fact that S.A. No. 46 of 2022 is pending before the DRT which is the competent authority to decide these issues.

64. It was submitted that the auction of the Secured Asset was conducted on the basis of a symbolic possession and that said auction was subject to the validity of such auction. Placing reliance on the terms and conditions of the auction, it was submitted that as per clause 19, it was specified that only symbolic possession of the Secured Asset would be delivered. As per clause 26 it was stipulated that the Secured Asset would be sold to the auction

purchaser on ‘as is where is’ and ‘as is what is and whatever there is’ basis and lastly, as per clause 29, it was stipulated that such sale would be subject to the outcome of S.A. No. 46 of 2022 pending before the DRT. Thus, any sale certificate issued in pursuance of such auction would also be subject to such terms of the auctions.

65. He further submitted that, the petitioner herein being fully aware about the aforesaid terms of auction, consciously participated in the auction process, and thus now cannot be permitted to claim either the absolute ownership of the Secured Asset despite the pendency of the proceedings before the DRT or demand physical possession of the same by relying upon the Sale Certificate that was directed to be issued by this Court in the Main Appeals when no such terms were stipulated in the 9th auction notice. He submitted that the Sale Certificate that came to be issued to the petitioner in accordance with the decision of this Court was purely on the basis of the terms of the auction and cannot by any stretch be in derogation of the same.

66. It was also submitted that the present contempt petitions proceed on a fundamental flaw that this Court in the Main Appeals had decided and directed the handing over of physical possession of the Secured Asset. Since physical possession was never the subject matter of the Main Appeals and no prayer to this effect was made by the petitioner, merely because physical possession has not been handed over it cannot be said that any contempt of

this Court's decision has been committed and thus, the present contempt petitions are misconceived.

67. It was further submitted that the petitioner was well aware that as per the terms of auction it was not entitled to obtain physical possession and thus, in its written submissions had only prayed that the Bank be directed to issue a Sale Certificate and carry all other necessary acts under the SARFAESI Act. Even this Court in the Main Appeals only directed the issuance of the Sale Certificate and not the delivery of physical possession of the Secured Asset.

68. He also submitted that where an auction is conducted on symbolic possession, the correct approach for obtaining physical possession of the secured asset is to initiate proceedings before the District Magistrate in terms of Section 14 of the SARFAESI Act. In this regard, reliance was placed on the decision of this Court in ***ITC Ltd. v. Blue Coast Hotels Limited & Ors.*** reported in **(2018) 15 SCC 99**.

69. He further submitted that in the present case the Bank had rightly filed an application under Section 14 of the SARFAESI Act for seeking physical possession and had even obtained a favourable order on 02.02.2024. Since, any order passed under Section 14 of the SARFAESI Act is challengeable before the DRT and appealable before the DRAT, the Borrower herein was well within its rights to challenge the order dated 02.02.2024 before the DRT

by way of S.A. No. 53 of 2024 which came to be rejected. Against which, the Borrower filed an appeal before the DRAT, wherein status quo was granted. He submitted that the Bank and the petitioner herein instead of challenging the order passed by the DRAT as required under the statutory provisions, decided to take law in their hands by filing the present contempt petition and MA, which is completely in negation of the statutory provisions of the SARFAESI Act.

70. It was further submitted that after the decision of this Court in the Main Appeals all the parties proceeded to pursue their remedies in accordance with the statutory provisions. The Bank pursued its application under Section 14 of the SARFAESI Act to obtain physical possession of the Secured Asset, the Borrower pursued the S.A. No. 46 of 2022 before the DRT, the petitioner pursued its IA in the aforesaid securitization application and the Subsequent Transferee pursued its suit. None of the parties complained of any contempt for a period of nearly 5-6 months.

71. It was submitted that any order passed by a competent judicial authority having jurisdiction to pass such order can only be challenged by following the due process and cannot be set-aside under the contempt jurisdiction, thus the present contempt petition is completely misconceived. Similarly, since neither the Bank nor the petitioner sought physical possession of the secured asset in the Main Appeals, it cannot be permitted to now seek the same by

expanding the scope of the Main Appeals by way of an MA. In this regard, reliance has been placed on the decision of this Court in ***Supertech Limited v. Emerald Court Owner Resident Welfare Association & Ors.*** reported in **(2023) 10 SCC 817** to contend that filing of MA is not permissible to expand the scope of SLP or re-litigate the matter.

72. It was further submitted that since in the Main Appeals, there were no directions passed against the Borrower herein to hand over physical possession, no contempt could be said to have been committed. Similarly, the transfer of the Secured Asset to the Subsequent Transferee during the pendency of the Main Appeals also does not amount to contempt as the same was done in compliance of the High Court's impugned order. Since the High Court had allowed the Borrower to redeem the mortgage on the condition that it tenders the entire dues payable by 31.08.2023 failing which the amount of Rs. 25 crore paid by it would be forfeited, & the entire dues would not have paid the Borrower would have not only lost the amount already paid by it but would have also been in contempt of the order passed by the High Court.

73. Thus, in order to comply with the High Court's order to its letter and spirit, the Subsequent Transferee paid the remaining dues to the Bank on behalf of the Borrower and thereafter the Secured Asset was transferred to it. He further submitted that, since during the pendency of the Main Appeals, there

was no prohibitory order or stay by this Court, the transferring of ownership by way of the Assignment Agreement does not amount to contempt. In this regard, reliance has been placed on the decision of this Court in ***Collector of Customs, Bombay v. Kirshna Sales (P) Ltd.*** reported in **(1994) Supp 3 SCC 73** that merely filing an appeal does not amount to a stay of the order and the decision in ***Patel Rajnikant Dhulabhai & Anr. v. Patel Chandrakant Dhulabhai & Ors.*** reported in **(2008) 14 SCC 561** that without a prohibitory order, there can be no contempt of court.

74. He further submitted that this Court in its decision in the Main Appeals held that a notice of auction can be published in the newspaper only after serving a 30-days clear notice to the borrower. It was submitted that the mandatory nature of the period prescribed is not a mere formality but a safeguard to the borrower to ensure that its right of redemption is given meaningful expression. Since in the present case both the notice to the borrower as-well as the auction notice were made on 14.06.2023, the auction proceedings is said to have taken place contrary to the mandate of law, and the sale of the Secured Asset in favour of the petition pursuant to such auction is illegal and void.

75. Placing reliance on the decisions of this Court in ***General Manager***, ***Sri Siddeshwara Cooperative Bank Limited & Anr. v. Ikbal & Ors.*** reported in

(2013) 10 SCC 83 and ***Vasu P. Shetty v. Hotel Vandana Palace & Ors.*** reported in **(2014) 5 SCC 660** it was submitted that the 30-day notice to the borrower in terms of Rule 8 and 9 of the SARFAESI Rules respectively is mandatory in nature and non-compliance of the same would render the auction illegal. Similarly, as per the decision of this Court in ***Govind Kumar Sharma & Anr. v. Bank of Baroda & Ors.*** reported in **2024 INSC 326**, an auction would be liable to be quashed if no 30-day notice is given by the bank.

76. It was submitted that if S.A. No. 46 of 2022 pending before the DRT is allowed then in light of the decision of this Court in the Main Appeals, the auction would be illegal and the right of redemption of the Borrower would survive and by extension all transactions executed by it in pursuance thereto including the transfer of the Secured Asset in favour of the Subsequent Transferee.

77. It was further submitted that the petitioner's contention that the pending proceedings under S.A. No. 46 of 2022 before the DRT did not survive after the decision of this Court in the Main Appeals more particularly after the issuance of the Sale Certificate is completely misconceived and untenable. In this regard it was submitted that ***first,*** the proceedings before this Court in the Main Appeals emanated from an interlocutory stage and ***secondly,*** both

the auction and the Sale Certificate issued in pursuance thereto does not vest in the petitioner an absolute ownership in the Secured Asset.

78. He submitted that S.A. No. 46 of 2022 was filed by the Borrower assailing the validity of the measures taken by the Bank under the SARFAESI Act and the same was still pending. When the 9th auction came to be conducted, the Borrowers filed an interlocutory application in the aforesaid securitization application for seeking redemption of mortgage, wherein orders were reserved. Against the aforesaid, the Borrower filed a writ petition before the High Court for seeking redemption of mortgage which was allowed. The same came to be challenged before this Court in the Main Appeals, wherein only the right of redemption in terms of Section 13 sub-section (8) of the SARFAESI Act was decided. Thus, the very proceedings before this Court in the Main Appeals emanated from an interlocutory stage and all other issues except the right of redemption continued to survive in the S.A. No. 46 of 2022. As a *fortiorari*, it was submitted that if the Borrower had not filed the writ petition which culminated into the proceedings before this Court in the Main Appeals, then the petitioner would have never claimed that DRT cannot examine the validity of the auction. Thus, it was submitted that this Court never intended to take away the aforesaid right of the Borrower to contest S.A. No.46 of 2022 before the DRT.

79. He further submitted that this Court whilst directing the Bank to issue the Sale Certificate in the Main Appeals never intended to uphold the legality of the auction, and that no such issue was also framed by it. Since, the terms of auction were clear that it would be subject to the outcome of the proceedings in S.A. No. 46 of 2022 before the DRT, the issuance of the Sale Certificate neither confirms the sale of the secured asset in favour of the petitioner sans the validity of the auction proceedings nor vests any absolute ownership in the same. In this regard, reliance has been placed on the decision of this Court in ***Valji Khimji*** (supra) to contend that where the auction is subject to subsequent confirmation by some authority (in this case the DRT) the auction cannot be said to be completed and no rights would accrue until the sale is confirmed by the said authority. Thus, it was submitted that not only does the cause of action for challenging the validity of the auction proceedings survive but also the proceedings in S.A. No. 46 of 2022 pending before the DRT.

80. In the last, Dr. A.M. Singhvi submitted that the Borrower unconditionally apologises to this Court for any of its actions, if they are perceived to be incorrect or in contempt of its decision in the Main Appeal and that the Borrower undertakes to comply with any further order that this Court may deem fit and proper for the ends of justice.

iii. <u>Submissions of the Subsequent Transferee / the respondent nos. 2 & 4</u>.

81. Mr. Kapil Sibal, the learned Senior Counsel appearing for the Subsequent Transferee at the outset submitted that it unconditionally apologizes for any of its actions that might have been perceived to have contravened any direction/ order of this Court.

82. Mr. Sibal submitted that the Subsequent Transferee is a *bona fide* third party purchaser of the Secured Asset. He submitted that the Subsequent Transferee was neither arrayed as a party to the proceedings in the Main Appeals nor issued a notice of the said proceedings either by the petitioner or by the Bank, despite the fact that they were aware of the transactions entered into by the Borrower for the transfer of the Secured Asset in its favour. He further submitted that prior to entering into the transaction there was no prohibitory order or interim order of stay concerning the said Secured Asset either by this Court or any other court. Since, the transaction which led to the purchase of the said property by it was completed and duly registered with the knowledge and cooperation of the Bank before the decision of this Court in the Main Appeals, they are neither in breach or violation of this Court's decision and as such the present contempt proceedings deserves to be dismissed qua the Respondent. It was further submitted that the title to the Secured Asset in favour of the Subsequent Transferee was never questioned or challenged

before any forum or impeached in any manner known to law even after the decision of this Court in the Main Appeals.

83. He further submitted that when the Subsequent Transferee tendered the entire consideration for the Secured Asset, there was admittedly neither any *lis pendens* in respect of the property registered as per due diligence conducted on its behalf nor had the petitioner acquired any rights to the said property. He submitted that as per the State amendment to Section 52 of the Transfer of Property Act, 1882 (for short, the "**TPA**") *lis pendens* will not apply if a notice is not registered. He submitted that the consequence of this omission in registration would be that *lis pendens* will not apply.

84. Since, in the present case admittedly there was no registration of *lis pendens* by the petitioner as mandated in Maharashtra under the mandatory provisions of Section 52 (1) of TPA, the Subsequent Transferee did not come across any legal impediment or restrictions or prohibitions to purchase of the Secured Asset and accordingly paid the consideration to lawfully acquire the same as a *bona-fide* purchaser.

85. He submitted that even if *lis pendens* is assumed to apply then too, it cannot affect the Assignment Agreement in its favour as the matter was neither *sub-judice* as against it nor was there any prohibitory / stay order for the transfer of the said property at the time of execution of the aforesaid Assignment

Agreement. It was submitted that the aforesaid agreement was a lawful transaction pursuant to the High Court's order and that mere filing of an appeal does not operate as a stay or suspension of the order appealed against as held in ***Krishna Sales*** (supra). Therefore, the Subsequent Transferee is said to have acquired a clear title to the said property.

86. When the Borrower redeemed the mortgage and executed the Release Deed with the Bank in pursuance of the impugned order of the High Court, the Bank relinquished its charge over the property and the very contractual relationship of secured creditor and borrower extinguished and as such the Bank had no authority to transfer any interest in the Secured Asset to the petitioner at the relevant time. Placing reliance on the decision of this Court in the Main Appeals, it was submitted that the factual matrix recorded therein discloses that the Subsequent Transferee had acquired a clear title and possession of the said property prior to the said decision and the Sale Certificate issued in lieu thereof. Since the Bank had already issued a No Dues certificate, provided a No Objection certificate, executed the Release Deed for its charge over the Secured Asset and handed over the original title deeds thereto, the Subsequent Transferee is said to have obtained a clear title of the property. He further argued that since there was a second charge over the said property, the Bank could have only confirmed a conditional sale of the Secured Asset. Consequently, even if the auction was completed, the said

property would not have been free from all encumbrances and the petitioner would have been required to redeem the second charge to acquire a clear title. Since it is the Subsequent Transferee who undertook the necessary steps to redeem the second charge, it is said to have acquired a clear title both in law and in equity.

87. It was submitted that the Subsequent Transferee was constrained to prefer the Special Civil Suit No. 5 of 2023 as the petitioner herein had attempted to take forceful possession of the Secured Asset. It was further submitted that the said suit had to be filed to protect its right and prevent its dispossession without following the due process of law. However, in terms of the undertaking given to this Court during the course of proceedings on 18.10.2024, it was submitted that the Subsequent Transferee has instructed its counsel to unconditionally withdraw the aforesaid suit.

88. He further submitted that the petitioner and the Bank are seeking to expand the scope of the present proceedings by claiming physical possession as a relief in the present contempt matter, when in fact such relief was never prayed in the Main Appeal. As the substantive relief seeking physical possession of the Secured Asset was not sought in the Main Appeals, the said relief cannot be obtained in the present contempt petitions.

89. He also submitted that the auction process with respect to the Secured Asset was only on the basis of symbolic possession and not physical possession of the said property and as such the parties while transacting as part of an auction process are bound by the process and the mandatory terms laid down therein. Even the Bank in the present miscellaneous application has admitted that it only had symbolic possession, and not the actual physical possession of the said property.

90. He further submitted that the process for obtaining physical possession of the Secured Asset is only by way of initiating a subsequent and completely different proceeding in terms of the statutory procedure laid down in Section 14 of the SARFAESI Act which was never the subject matter before this Court and as such the Subsequent Transferee ought not to be dispossessed without following due process/ procedure laid down in law as per SARFAESI Act/ Rules. The Bank had rightly pursued its remedy under Section 14 for seeking physical possession in line with the decision of this Court in ***Blue Coast Hotels*** (supra) and the parties now cannot be permitted to seek the same in the present contempt petitions and the miscellaneous application.

91. He submitted that the aforesaid application of the Bank under Section 14 came to be allowed, which was later challenged before the DRT wherein the Tribunal refused to stay the same. Against this an appeal was preferred

wherein the DRAT granted status quo on the ground that possession notice had not been given by the bank/tehsildar. Rather than challenging the aforesaid order, the petitioner and the Bank have mischievously preferred the present contempt petitions and miscellaneous application respectively as an attempt to short circuit the process of law for obtaining physical possession.

92. He further argued that the scope of proceedings before this Court in the Main Appeals as evident from the questions of law framed therein, primarily related to the cut-off date to exercise right of redemption under Section 13(8) of the SARFAESI Act and not regarding the validity of the measures taken under the SARFAESI Act, 2002, including the auction process.

93. Since the auction conducted by the Bank by which the Sale Certificate was issued to the petitioner was subject to the outcome of S.A. No. 46 of 2022 pending before the DRT, the petitioner ought not to be permitted to extend the scope of the matter to overcome these proceedings pending in the DRT.

94. He submitted that it is the bona fide understanding of the Subsequent Transferee that the auction by which the petitioner claims its rights is illegal, having regard to the law laid down by this Court in the Main Appeals. He argued that the auction was bad in law as the Bank has violated mandatory statutory requirements for the auction process, more particularly the mandatory 30-days period required to be maintained between the notice to

the borrower and the sale notice in terms of Rule 8(6) and 9(1) of the SARFAESI Rules. In the present case both the aforesaid notices were issued on the same date i.e., 12.06.2023 thereby rendering the auction null and void. Thus, the petitioner at based could be said to have acquired only inchoate rights to the Secured Asset subject to the terms of the auction and the validity of the auction proceedings.

95. In light of the above, he submitted that it is the *Bonafide* understanding of the Subsequent Transferee that the Borrower's right of redemption stood revived in view of the illegality of the auction proceedings and thus, authenticated and crystalized the Assignment Agreement executed in its favour.

96. He further submitted that neither this Court nor the High Court in the writ petition has delved into the aspect of legality of the auction proceedings, and thus, prayed that this Court be pleased to relegate the parties to an appropriate forum in accordance with law for adjudication of several issues relating to the said property and the illegal process of auction conducted thereto to safeguard its constitutional right enshrined under Article 300A of the Constitution.

97. He submitted that the entire gamut of proceedings before this Court in the Main Appeals have emanated from an interlocutory application filed in S.A.

No. 46 of 2022 and that the very substantive and procedural aspects relating to the Bank's measures the under SARFAESI Act and Rules thereunder are still pending adjudication.

98. In the last, Mr. Sibal submitted that the Subsequent Transferee had to borrow significant amount for purchasing the Secured Asset from its financiers who now have the title deeds to the property as security against the loan taken by it. He submitted that if the reliefs sought by the petitioner are granted grave prejudice and hardship would be caused to the Subsequent Transferee. Accordingly he prayed that the present contempt petition and the miscellaneous applications be dismissed and the Subsequent Transferee be permitted to pursue the S.A. No. 46 of 2022 pending before the DRT.

iv. <u>Submissions of the Bank / the respondent no. 3</u>.

99. Mr. Raju Ramachandran, the learned Senior Counsel appearing for the Bank submitted that this Court in its decision in the Main Appeals categorically held that under the amended Section 13(8) of SARFAESI Act, the right of the borrower to redeem a secured asset stands extinguished on the date of publication of public auction notice and overruled the impugned order of the High Court that had allowed the Borrower to redeem the mortgage.

100. He submitted that in the said decision, this Court not only held the redemption of mortgage after auction notice as unlawful but also confirmed the right of the auction purchaser to the Secured Asset and directed the refund of the entire amount paid by the Borrower towards redemption, and further directed the Bank to issue the sale certificate in favour of the petitioner in accordance with Rule 9(6) of the SARFAESI Rules upon payment of an additional amount of Rs. 23.5 crore by it.

101. He submitted that the implied effect of this decision is that the Release Deed executed by the Bank and the Assignment Agreement executed by the Borrower had to be cancelled and the original title deeds to the Secured Asset were to be returned to the bank so that they may be handed over to the petitioner.

102. He submitted that the Bank in compliance of this Court's decision in the Main Appeals, issued the Sale Certificate for the Secured Asset to the petitioner and on the same day addressed a letter to the Joint Sub-Registrar, Thane, requesting it to take immediate steps for cancellation of the aforesaid Release Deed. The Bank also addressed a letter to the Borrower requesting it to take steps for cancellation of the aforesaid deed and provide the title document to the said property along with the bank details to refund its money.

103. The Bank on 06.10.2023 further took steps and got the Sale Certificate issued in favour of the petitioner registered before the Joint Sub-Registrar, Thane–8 vide Registration No. 22540 of 2023.

104. He submitted that the Bank further addressed another letter to the Borrower requesting it to take immediate steps for cancellation of the Release Deed and to hand-over the title documents of the property to the Bank to enable it to initiate the refund of its money, however the same were to no avail.

105. When the Subsequent Transferee instituted the suit for seek a declaration of title to the Secured Asset in its favour, the Bank immediately took steps by entering appearance and filing an application under Order VII Rule 11 of the CPC *inter-alia* contending that the reliefs claimed is in violation of the decision of this Court in the Main Appeals.

106. He further submitted that the Bank in order to recover the physical possession of the subject property filed an application under Section 14 of the SARFAESI Act before the District Magistrate, Thane. The said application came to be allowed on 02.02.2024 and possession was scheduled to be taken on 29.02.2024. Against this, the Subsequent Transferee filed an application in the suit for seeking ad-interim injunction and grant of status qua as regards the possession which was allowed, the Bank promptly challenged the same before the High Court. Whereas the Borrower challenged the said possession

notice before the DRT which was rejected but in appeal status quo was granted by the DRAT.

107. He submitted that the as per the decision of this Court in the Main Appeals, the Borrower was duty bound to return the possession and title deeds of the secured asset to the Bank for the purpose of handing the same over to the petitioner, and as a natural consequence of the direction to issue the Sale Certificate the Borrower was required to get the Release Deed and the Assignment Agreement cancelled. However, the Borrower in league with the Subsequent Transferee has prevented the implementation of the aforesaid directions as per the judgment of this Court in the Main Appeals and complicated the issue by taking recourse to untenable dilatory litigations against one and all.

108. In light of the above, the Bank was compelled to prefer the present miscellaneous application before this Court for seeking directions for the implementation of the decision of this Court in the Main Appeals and *inter-alia* declare the Release Deed dated 28.08.2023 executed by the Bank in compliance of the High Court's impugned order and the Assignment Agreement dated 28.08.2023 executed by the Borrower in favour of the Subsequent Transferee as null and void and further direct the Borrower to return the original title documents of the subject property to the along with the details for initiating refund of its money paid towards redemption of

mortgage, and to direct the District Magistrate Thane to immediately take possession of the secured asset and handover the same to the Bank.

C. ISSUES FOR DETERMINATION

109. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration: -

I. Whether any act of contempt could be said to have been committed by the respondent nos. 1 to 4 respectively of the judgment and order dated 21.09.2023 passed by this Court in Civil Appeal Nos. 5542-5543 of 2023? In other words, whether the respondents herein in light of the aforesaid decision of this Court were duty bound to cancel the Release Deed dated 28.08.2023 and hand over the physical possession along with the original title deeds of the Secured Asset to the petitioner herein?

II. Whether, the proceedings arising out of S.A. No. 46 of 2022 could have continued after this Court's judgment and order dated 21.09.2023 directing the issuance of the Sale Certificate of the Secured Asset to the petitioner herein? In other words, whether the petitioner by virtue of the Sale Certificate dated 27.09.2023 is said to have acquired a clear title to the said property?

III. Whether the transfer of the Secured Asset in favour of the Subsequent Transferee by way of the Assignment Agreement dated 28.08.2023 is hit by *lis pendens*? In other words, whether the absence of any registration in accordance with Section 52 of the TPA as amended by the State of Maharashtra renders the *lis pendens* inapplicable?

D. ANALYSIS

i. Concept of Abuse of Process of Court and Collateral challenge to judgments that have attained finality.

110. Before we proceed with the analysis, it is necessary to understand the stance of the Borrower throughout the present litigation, as discernible from their pleadings before different forums, which has left us quite perplexed.

111. It is the case of the Borrower that there is no contempt not to speak of any violation of the decision of this Court rendered in the Main Appeals as the issue of validity of the 9th auction was never touched upon by this Court whilst deciding the right of the Borrower to redeem the mortgage, rather this Court had preserved the right of the Borrower to continue with its challenge to the auction proceedings before the DRT. Thus, in essence it is the case of the Borrower that this Court had adjudicated the right of redemption independent of the validity or legality of the SARFAESI proceedings that involved these rights.

112. When the Bank published the notice of sale for the 9th Auction on 12.06.2023, the Borrower herein on 26.06.2023 preferred two applications before the DRT being I.A. No. 2253 of 2023 and I.A. No. 2254 of 2023 in S.A. No. 46 of 2022 respectively, *inter-alia* for amending its pleadings to challenge the 9th auction proceedings and for seeking stay of the said auction in the meantime. In the said application, the Borrower *inter-alia* sought to challenge the 9th Auction on the ground that there was no 30 or 15 days between the 'service' of the notice of sale and the date of auction, and thus was in violation of the statutory rules. The relevant grounds sought to be included by way of amendment of pleadings are as under: -

> *"**IN GROUNDS:***
> ***After Ground No. G: Insertion of Ground Nos. G(i) to G(viii)***
> ***G-(i)*** *Undisputedly, in the 1st auction proceeding under sale notice dated 25th March, 2022, the Respondent failed to give a clear 30 (thirty) days of notice. Likewise, in the 2nd auction proceeding under sale notice dated 30th April 2022, the Respondent failed to give a clear 15 (fifteen) days of notice. Additionally, there were several glaring defects and illegalities in both the sale notices. Therefore, the sale notices dated 25th March 2022 and 30th April, 2022 cannot be treated and terms as lawful sale notices. The Respondent suo-moto cannot be considered to have conducted the 1st or 2nd auction and failed. According to the Applicants, the Respondent never conducted the 1st and / or 2nd lawful auction/s process as per law. Therefor, the Respondent is duty bound to give a clear 30 (thirty) days gap as the 1st auction notice was never conducted nor termed as lawful. Thus, the impugned Auction Sale Notice dated 12th June 2023 has failed.*
>
> *xxx xxx xxx*

G-(v) *That, the sale notice dated 12th June 2023 is bad in law and not issued in accordance with the provisions of SARFAESI Act and rules thereunder. More particularly, the impugned Sale Notice is perverse for the following reasons;*

a. There is no 30/15 days gap between service of the notice and the auction as under law this is first auction.
b. Known encumbrance has not been disclosed as per Rule 8 of the SIE Rules.
c. Sale process is in blatant violation of Rule 8 & 9 of the SIE Rules.
d. Sale notice has not been pasted at the secured assets.
e. It is not in a statutory format provided at Appendix IV-A.
f. Rule 8(5) of the SIE Rules has not been followed in its true spirit as it seems that reserve price is being fixed based on desktop valuation. "

Accordingly, the Borrower by way of the aforesaid application for amendment sought an additional prayer for quashing and setting-aside of the Auction Sale Notice dated 12th June 2023 and all further and consequential measures pursuant thereto. The prayer sought reads as under: -

*"**IN RELIEFS SOUGHT:***
After Paragraph No. 6(b): Insertion of Paragraph No. 6-(b)-i
6-(b)-i *That, this Hon'ble Tribunal may be pleased to quash and set-aside the impugned Auction Sale Notice and Public Notices dated 12th June 2023 and hold all further and consequential measures pursuant to the impugned Auction Sale Notice dated 12th June 2023 as defective and in violation of the SARFAESI Act and Rules made thereunder."*

113. While the aforesaid applications were still pending the Borrower decided to move the High Court with Writ Petition No. 9523 of 2023 seeking the indulgence of the High Court to call for the proceedings arising from the S.A. No. 46 of 2022 pending before the DRT-I, Mumbai to itself, and then

adjudicating the same by examining the validity of the actions taken by the Bank under the SARFAESI Act and thereafter permit the Borrower to redeem the mortgage. In the alternative, it was prayed that the Bank may be directed to not take any further steps in confirming the sale to the petitioner till the S.A. No. 46 of 2022 is decided by the DRT. Thus, in essence, the prayer of the Borrower before the High Court was two-fold: -

(i) **Prayer (a) / Para 11(a) of the writ petition:** Either to seize the issues arising in the S.A. No. 46 of 2022 before the DRT for itself and decide the same in favour of the Borrower and consequentially permit it to redeem the mortgage of the Secured Asset or;

(ii) **Prayer (b) & (c) / Para 11(b) (c) of the writ petition:** Alternatively, stay the confirmation of the sale under the 9th auction by the Bank till the S.A. No. 46 of 2022 is decided by the DRT along with a further direction that the Borrower be given the liberty to tender the remaining amount and redeem the mortgage i.e., prayers 11(c) and 11(b) respectively.

At the cost of repetition, the relevant prayers sought by the Borrower in the writ petition before the High Court are reproduced hereunder: -

> *"**11. THE PETITIONERS, THEREFORE, PRAY:***
>
> *(a) That this Hon'ble Court be pleased to issue Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ, calling upon the papers and proceedings of the Securitization Application No. 46 of 2022 pending*

before the Hon'ble DRT I, Mumbai and after examining the legality, validity and propriety thereof, be pleased to allow the Petitioners to redeem the mortgage as per schedule provided in the Interim Application No. 2339 of 2023 filed before the Hon DRT I, Mumbai or within such reasonable period as this Hon'ble Court may deem fit and proper;

(b) *That this Hon'ble Court be pleased to direct the Respondent to issue "No Dues Certificate" and release All piece and parcel of leasehold land to the extent of 16200 sq. mtrs various buildings and ancillary structures at amalgamated plot no. D-105, D-110 and D-111, Trans Thane Creek Industrial Area, MIDC, Village Shirwane, Thane- Belapur Road, Navi Mumbai, Dist- Thane, Maharashtra, 400706, after getting the entire redemption amount;*

(c) *In the alternate, that this Hon'ble Court be pleased to direct the Respondent not to take any further steps for issuance of the sale Certificate by confirming the sale until the hearing and final disposal of the Securitization Application No. 46 of 2022 pending before the Hon'ble DRT I, Mumbai;"*

(Emphasis supplied)

114. What can be discerned from the above is that the initial stance of the Borrower before the High Court was that its right of redemption was wholly dependent upon the adjudication of S.A No. 46 of 2022. In such circumstances, it had prayed before the High Court to either decide the said securitization application itself and thereupon permit the redemption of mortgage or otherwise to stay the auction proceedings till the same was decided by the DRT. Thus, the Borrower's case at that time was clearly that its right of redemption is not independent of the challenge to the validity of the measures taken by the Bank under the SARFAESI Act and rather was consequential to it, which is why both its primary prayer and its alternative

prayer sought for the adjudication of the S.A No. 46 of 2022 on the basis of which its right may then be adjudicated. The prayer made by the Borrower in paragraph 11(b) of its writ petition is particularly interesting, inasmuch as it is seeking a direction from the High Court that it may be permitted to redeem the mortgage during the pendency of the S.A No. 46 of 2022, which further reinforces that until the securitization application was decided it could not have redeemed its mortgage without a specific direction permitting it to do so.

115. The pleadings of the Borrower in the aforesaid writ petition are also significant to the controversy at hand. The Borrower had assailed the demand notice dated 07.06.2021 under Section 13(2), the possession notice dated under Section 13(4) and the e-auction sale notices dated 25.03.2022 issued under the SARFAESI Act on various grounds. Pertinently, the Borrower in its writ petition never imputed any illegality or perversity to the 9th Auction notice. From a plain reading of the aforesaid writ petition, the following position emerges: -

(i) Although the Borrower at paragraph 4.28 has stated that the aforesaid auction notice was issued on 12.06.2023 scheduling the auction for 30.06.2023, yet there is nothing to indicate that the Borrower had assailed the said notice on the ground of want of a 30 / 15 days period of notice in terms of Rule 8 and 9 of the SARFAESI Rules.

(ii) In the very next paragraph i.e., at paragraph 4.29, although the Borrower has stated that the sale process is absolutely erroneous, yet it has not laid any specific challenge to the 9th auction notice dated 12.06.2023. Thus, far from a mere bald assertion that the sale process is erroneous, no specific plea as regards the absence of a 30 / 15 days gap between the sale notice and auction was taken, which the Borrower now seeks to espouse in the present contempt petition.

(iii) Pertinently, in the grounds, the Borrower has left no stone unturned for challenging the demand notice, the possession notice, the first sale notice, the valuation of the Secured Asset by the Bank etc. Yet again, the plea which the Borrower seeks to take in the present contempt petition is conspicuously absent. The ground taken by the Borrower at paragraph 'x' again at best can be construed as seeking to challenge the validity of the first sale notice and not the 9th auction notice.

(iv) The only ground which remotely touches the validity of the 9th auction notice dated 12.06.2023 appears to be at paragraph hh. which again does not contain the plea which the Borrower has taken in the present contempt petition as regards the validity of the said sale notice, rather, the Borrower's contention in the said paragraph is plain & simple that due to the infirmities in the earlier measures taken by the Bank under the SARFAESI Act, namely the demand notice, the possession notice

and the first sale notice, all subsequent actions are also rendered illegal and contrary to the provisions of the Act.

The relevant paragraphs of the Borrower's writ petition referred to above are reproduced hereunder: -

"4.28 On 12th June, 2023, Respondent No. 1 has published Sale Notice scheduling auction of the said property on 30th June, 2023 with a Reserve Price of Rs. 105,50,00,000/-. Hereto annexed and marked ***Exhibit "F"*** *is a copy of the Sale notice dated 12th June, 2023.*

4.29 The Petitioners most respectfully submit that without prejudice to their rights and contentions, the sale process was absolutely erroneous in addition to the defects already committed by the Bank as stated herein above.

xxx xxx xxx

GROUNDS: -

xxx xxx xxx

n. that the actions on the part of the Respondent as measures under ·provisions of SARF AESI Act are entirely illegal, arbitrary, unreasonable and unjustified;

xxx xxx xxx

r. that, the E-auction sale notice dated 25th March 2022 which was delivered upon the Petitioners only on 3lst March 2022, whereas the Auction is fixed on 29th April 2022 Thus, there is no clear gap of 30 (thirty) days. Being 1st auction Respondent is duty bound to give clear 30 (thirty) day notice to the Petitioners as per the mandate· of Rule 8(6) read with Rule 9(1) of the SIE Rules. Thus, the impugned e-auction notice dated 25th March 2022 and all further and consequential action become perverse;

s. that, the impugned sale notice dated 25th March 2022 is in violation of Rule 8(7) (b) of SIE Rules. Under Rule 8(7)(b), legislature requires authorized officer to state the "secured debt

for recovery of which the property is to be sold". Perusal of the impugned auction notice, demonstrates that Respondent has recorded alleged outstanding as on 28th February 2022 and failed to state exact outstanding as on the date of sale notice for which the property is getting sold. The amount of dues mentioned in the purported auction· notice is uncertain and vague. In these peculiar circumstances it is more than enough to prove that there is basic and patent illegality in the. entire E-auction proceeding;

t. that, as per the mandate of Rule 8(6)(f), mandates of the secured creditor/authorized officer to disclose the encumbrances known to the Respondent. Herein, admittedly the Secured creditor was fully aware about the encumbrances of Rs.2,08,40;362/- (Rupees· Two Crores Eight Lakhs Forty Thousand Three Hundred and Sixty-Two Only) OR Rs.2,53,40,362/- (Rupees Two Crores Fifty-Three Lakhs Forty Thousand Three Hundred and Sixty-Two Only). towards property tax bill which was found pasted by the Respondent during their site visit as, duly recorded in a Bank's letter dated 14th January 2022. 0nce, again, Petitioner vide letter dated 17th January 2022 confirmed that the property tax dues are pending and Corporation has pasted the notice for an encumbrance of Rs. 2,53,40,362/- (Rupees Two Crores Fifty-Three Lakhs Forty Thousand Three Hundred and Sixty Two Only);

u. that moreover, the Rule 9(10) of the Security Interest (Enforcement) Rule states that the certificate of sale to be issued by the Authorised Officer shall specifically mention that whether purchaser has purchased the immovable secured asset free from any encumbrance known to the secured creditor or not. A plain reading of the SARFAESI. Act/Rules casts a duty upon the, Bank / Financial Institution to furnish those encumbrances which are known to them on the property which are sold by them. As stated above, despite having fully known about the encumbrances of property tax, Authorized Officer at clause 4 of the impugned sale notice has falsely and misleadingly recorded that "NOT KNOWN". On this ground alone, impugned sale notice dated 25 March, 2022 fails in its entirety;

w. that, sale notice dated 25th March, 2022 is bad in law and not issued in accordance with the provisions of SARFAESI Rules thereunder. Impugned Sale Notice is perverse for following reasons;

x. <u>that there is no 30 days gap between service of notice and auction</u>;

y. that known encumbrance has not disclosed as per Rule 8;

z. that sale process is in blatant violation of Rule 8 & 9;

aa. that sale notice has not been pasted at the secured assets and the same is not in statutory format provided at Appendix IV-A;

cc. that Rule 8(5) has not been followed in its true spirit as it seems that ·reserve· price is being fixed based· on desktop valuation;"

(Emphasis supplied)

116. Even before the High Court, as evident from the impugned order, the Borrower had not canvassed any submissions on the illegality or invalidity of the measures taken by the Bank under the SARFAESI Act including the validity of the 9th auction notice dated 30.06.2023. The specific plea which the Borrower had taken in the present contempt petition, namely the lack of a 30 / 15 days gap between the sale notice and auction is conspicuously absent. On the contrary it appears that the Borrower in the aforesaid writ petition had abandoned its right to challenge the validity of all measures taken by the Bank under the SARFAESI Act. We say so because of the following reasons: -

(i) **First,** before the High Court the Borrower had submitted that if they are unable to pay the entire dues for redemption of mortgage by 31.08.2023, then the possession of the Secured Asset would be

voluntarily handed over to the petitioner. The relevant observations read as under: -

> *"5. Today, Mr. Shinde, the learned Advocate appearing for the Respondent Bank, on instructions, has stated that if the Petitioners are willing to pay the entire amount of Rs. 129 crores on or before 31st August 2023 and subject to them paying over to the Bank a sum of Rs. 25 crores today [by Demand Drafts], they have no difficulty in allowing the Petitioners to redeem the mortgage. The further condition that Mr. Shinde put forth for accepting this offer was that the Securitization Application filed before the DRT would stand dismissed on the passing of this order, and if the payment is not made by 31st August 2023, possession of the secured asset would be handed over by the Petitioners to the Auction Purchaser on 5th September 2023.*
>
> *6. Mr. Khandeparkar, on taking instructions, has fairly stated that in the event the entire amount of Rs. 129 crores is not paid by the Petitioners on or before 31st August 2023, then the Petitioners shall voluntarily hand over vacant, peaceful, and quiet possession of the secured asset to the Auction Purchaser on or before 5th September 2023."*
>
> (Emphasis supplied)

(ii) **Secondly,** the High Court in view of the aforesaid categorically held that on passing of the impugned order the entire challenge laid to the actions of the Bank under the SARFAESI Act would come to an end. It further held that even if the Borrower failed to redeem the mortgage even then no challenge could be laid to the sale of the secured asset and that the physical, vacant and quiet possession would be handed over to the auction purchaser. The relevant observations are reproduced hereunder: -

"11. We have heard the learned Counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. It is not in dispute that the Petitioners have approached the DRT by filing an application for redemption of the mortgage. As mentioned earlier, this application is an Interim Application filed in Securitization Application No. 46 of 2022 and which is also pending. Considering these facts, under normal circumstances, we would not have entertained the above Writ Petition. However, in the peculiar facts and circumstances of the present case, we are of the opinion that considering stand taken by the Respondent Bank [and which is accepted by the Petitioners without any conditions or reservations], it would be in the interest of all concerned if the consensus reached between the Respondent Bank and the Petitioners is taken cognizance of by us. We say this because in the present scenario, by 31st August 2023, the Respondent Bank will receive its entire dues one way or the other. In the event the Petitioners adhere to its promise to pay the entire dues [of 129 crores] by 31st August 2023, then naturally, the Bank will receive its entire money. In contrast, if the Petitioners default in making payment of the entire sum of Rs.129 crores, the sum of Rs. 25 crores to be paid over to the Respondent Bank today, would be appropriated by the Bank towards the outstanding dues of the Petitioners, and the balance Rs.105.05 crores would be received from the Auction Purchaser who has already deposited the entire sale consideration with the Respondent Bank. It is taking these circumstances into consideration that the Respondent Bank has changed its stand from the stand it took before the DRT when it opposed the Petitioners' application for redemption. Another reason why the Respondent Bank has changed its stand is because the entire litigation will come to an end on the passing of this order. In other words, on the passing of this order itself, the entire challenge laid by the Petitioners to the actions of the Bank [under the provisions of the SARFAESI Act, 2002] comes to an end. Therefore, even if the Petitioners default in making payment by 31st August 2023, no challenge can be laid to the sale of the secured asset to the Auction Purchaser. Further, as per the statement of Mr. Khandeparkar, in the event the Petitioners fail to pay

the entire dues of Rs.129 crores to the Respondent Bank by 31st August 2023, vacant, quiet, and peaceful possession of the secured asset would be handed over by the Petitioners to the Auction Purchaser and the Bank would then issue a sale certificate in favour of the Auction Purchaser. When one looks at all these facts, we find that the arrangement referred to above is in the interest of all, including the Auction Purchaser. We say this because, by 31st August 2023, the Auction Purchaser will either get the secured asset free from litigation or will get a refund of the entire amount paid by it to the Respondent Bank for agreeing to purchase the secured asset."

(Emphasis supplied)

(iii) **Lastly**, the High Court whilst permitting the Borrower to redeem the mortgage specifically noted, that in light of its order nothing survived in the S.A. No. 46 of 2022 pending before the DRT and that the sale of the Secured Asset shall stand confirmed in favour of the petitioner. Furthermore, the High Court treated the Borrower's leave to withdraw the aforesaid securitization application and not challenge the validity of the measures taken under the SARFAESI Act as an undertaking to the High Court. The relevant observations read as under: -

"15. In light of the foregoing discussion, the following order is passed: -

xxx xxx xxx

(e) In the event the balance amount of Rs. 104 crores are not paid by the Petitioners to the Respondent-Bank on or before 31st August 2023, the Respondent Bank shall then be entitled to appropriate the money from the No Lien interest bearing account towards the dues payable by the Petitioners and the sale of the secured asset shall be confirmed in favour of the Auction Purchaser and a sale certificate shall be issued in their favour. All formalities

in relation to registration of that certificate shall also be done by the Respondent-Bank and the Auction Purchaser.

(f) In light of this order, Mr. Khandeparkar has stated that, nothing would survive in Securitization Application No. 46 of 2022 and/or the Interim Applications filed therein and seeks leave to withdraw the same within a period of one week from today. The said statement is accepted as an undertaking given to the Court. It is needless to clarify that even if the Petitioners do not withdraw the Securitization Application, the same shall stand dismissed in light of this order and the Petitioners will not be permitted to litigate any further with the Respondent Bank in relation to the secured asset. In other words, if the Petitioners default in making the balance payment of Rs.104 crores to the Respondent Bank by 31st August 2023, the Auction Purchaser shall get the secured asset free from litigation. As per the statement made by Mr. Khandeparkar, and which is accepted as an undertaking given to the Court, if the Petitioners default in making the balance payment of Rs.104 crores by 31st August 2023, physical, vacant, quiet, and peaceful possession of the secured asset shall be handed over to the Auction Purchaser on or before 5th September 2023."

(Emphasis supplied)

117. What can be discerned from the above is that although the Borrower in its writ petition had initially prayed for adjudication of the S.A. No. 46 of 2022 either by the High Court itself or in the alternative by the DRT subject to the auction proceedings being stayed, yet during the hearing it had effectively waived of its right to pursue the said securitization application and to challenge the actions taken by the Bank under the SARFAESI Act including the 9th auction notice. Similarly, although the High Court permitted the Borrower to redeem the mortgage yet its right to challenge the validity of the

sale had been foreclosed by the High Court irrespective of whether the Borrower is able to actually tender the dues for redemption or not. Moreover, the proceedings under the said S.A. No. 46 of 2022 did not merely come to an end as a consequence of the impugned order of the High Court but rather due to the unconditional undertaking of the Borrower to withdraw the same within a period of 1-week, independent to the exercise of its right of redemption. Thus, effectively the Borrower at that stage had waived its right to pursue the S.A. No. 46 of 2022 on its own accord, and at no point of time did it contend before the High Court to preserve this right in the event it was unable to redeem the mortgage.

118. Thereafter the said matter travelled to this Court. Manifold submissions were made by the Borrower, the Bank and the petitioner on the issue of redemption of mortgage in terms of Section 13(8) of the SARFAESI Act. The petitioner herein assailed the impugned order of the High Court permitting the borrower to redeem the mortgage *inter-alia* on the ground that it was contrary to the amended Section 13(8) of the SARFAESI Act, and that once the sale stood confirmed by the Bank, the sale certificate of the Secured Asset could not have been withheld. Accordingly, the petitioner prayed that not only the impugned order of the High Court be set-aside, but the Bank be further directed to issue the sale certificate for the Secured Asset. In response, the Borrower herein *inter-alia* contended that no error not to speak of any error

law could be said to have been committed by the High Court in the interpretation of Section 13(8) of the SARFAESI Act, and that since the Borrower has already redeemed the mortgage during the pendency of the Main Appeals in compliance of the High Court's order, the only issue which remained was the refund of the amount deposited by the petitioner pursuant to the auction. After hearing the parties at length, this Court vide its order dated 01.07.2023 reserved the matter for judgment and further directed the parties to file their written submissions.

119. Pursuant to the above, the petitioner herein on 04.09.2023 at 15:40 PM filed its written submissions wherein it *inter-alia* submitted that since the auction was already completed and the Bank had confirmed the sale of the Secured Asset to the petitioner, a vested right in the Secured Asset had accrued in its favour. It further submitted that of the manner in which the Borrower and the Bank during the pendency of the Main Appeals, had precipitated the matter by hastily entering into private arrangements to overtake the proceedings and undermine the issue involved, prayed that this Court not only set-aside the High Court's impugned order but also *inter-alia* order the issuance of sale certificate of the Secured Asset and the handing over of its original title deeds along with reversal of all steps taken by the Bank and the Borrower pursuant to the High Court's order. The relevant portion of the petitioner's written submissions are reproduced hereunder: -

"5.6 Knowing that the Supreme Court may consider the legality of what was being attempted, the Borrowers and the Bank have precipitated matters with the intention of letting events overtake this Hon'ble Court's scrutiny. Not only has the Bank accepted payment of Rs. 129 crore but it has also hastily proceeded to sign and register the mortgage cancellation documents and issue a no-dues certificate.

5.7 No regard has been shown for this Hon'ble Court considering the matter. One can understand that the Borrowers would pay the Rs. 129 crores by 31.08.2023. However, the haste with which steps have been taken thereafter is for everyone to see. The petitioner has obviously refused refund of its money, pending the decision of this Hon'ble Court.

5.8 However, considering the illegality which the Impugned Judgment has permitted and that steps have been taken to implement the Impugned Judgment during the pendency of this SLP, the Petitioner respectfully submits that to do complete justice, this Hon'ble Court must not only set aside the Impugned Judgment but must also order that:

i) All steps taken pursuant to the Impugned Judgment be reversed;

ii) The registered documents executed pursuant to the Impugned Judgment be cancelled;

iii) The borrowers be ordered to handover the title documents of the secured asset back to the Bank;

iv) The Bank be ordered to pay to the Borrowers, a sum of Rs. 129 crores;

v) The Bank be permitted to cancel its no-dues certificate issued to the Borrowers and also be permitted to take recourse to whatever remedies it has in law to recover the remained of its outstandings from the Borrowers;

vi) The Bank be ordered to issue in the Petitioner's favour, a sale certificate; have the same registered and do and carry out all other acts necessary under the SARFAESI Act and the Security Interest Rules.

5.9 It is only because the High Court has interfered in the matter and every step has been taken by the Borrowers and the Bank to defeat the vested rights of the Petitioner, that such extra-ordinary orders are warranted. This is the only manner in which the Petitioner's vested right as an auction purchaser can be protected and given effect to."

(Emphasis supplied)

120. On the very next day i.e., 05.09.2023 at 10:32 AM, the Borrower herein filed its written submissions wherein apart from contending that the right of redemption under the amended Section 13(8) of the SARFAESI Act does not get extinguished upon issuance of the notice of sale and that the impugned order of the High Court warranted no interference of this Court in view of the fact that the mortgage has already been redeemed and that even the Secured Asset stood transferred to a third-party, the Borrower interestingly never raised the issue of the illegality of the 9th auction notice. Even though the petitioner herein had contended that it had a vested right in the Secured Asset and prayed for issuance of sale certificate to that effect and handing over of original title deeds, the Borrower remarkably neither disputed the same nor imputed any illegality in the very auction process through which the petitioner claimed its vested right. The Borrower having already waived / abandoned its right to challenge the legality of the auction proceedings before the High Court did not even put forth an alternative plea to preserve its right to pursue S.A. No. 46 of 2022 in the event this Court held that it had no right to redeem the mortgage. The entire written submissions of the Borrower is being reproduced hereunder: -

*"**WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1***

1. *The present Special Leave Petition arises out of the impugned order dated 17.08.2023 (uploaded on 26.8.2023) in Writ Petition No. 9523 of 2023 along with Interim Application Stamp No. 21706 of 2023 before the Hon'ble High Court of Judicature at Bombay.*

2. *Vide the impugned order, the Hon'ble High Court has allowed the original Petitioners i.e. Respondent No.1 herein, to exercise their right of redemption upon property being Plot No. D-105, D-110 and D-111, Trans Thane Creek Industrial Area, MIDC Village Shirwane, Thane, Belapur Road, Nerul, Navi Mumbai, Thane, Maharashtra 400906 (for short "the secured asset"), prior to the issue of the Sale Certificate, in lieu of repayment of the Entire Mortgage Amount on Ledger Balance (Principal+Interest+Penal Interest+ Overdue Charges + Costs) of the Secured Creditor i.e. Respondent No. 3, Union Bank of India. .*
3. *Through the said Writ Petition, the Hon'ble High Court rightly, in the peculiar facts and circumstances (as noted in para 11 of the impugned order) exercised its in extraordinary jurisdiction under Article 226, passed the following directions favour of Respondent No.1 herein:-*
    a. *The Respondent No.1 herein shall hand over a sum of Rs. 25 Crores to the Respondent Bank today i.e. on 17.8.2023 (in compliance with this direction, the Counsel for the Respondent before High Court handed over three Demand Drafts in the sum of Rs. 10 Crores, 10 Crores and 5 Crores respectively to the Advocate appearing on behalf of which was duly acknowledged by him);*
    b. *The balance amount of Rs. 104 Crore shall be paid by the Respondent No.1 herein to the Respondent Bank on or before 31%* August 2023 in the designated account (**Already Complied with on 28" August 2023**);*
    c. *If the amount of Rs. 104 Crores is paid in the said account on or before 31.8.2023, the same shall be appropriated by the Respondent Bank towards the dues of the Respondent No.1 herein. The Bank shall then return the original title deeds of the secured asset to the Respondent No.1 herein, execute all such documents for cancellation of mortgage, and issue a 'No Dues Certificate' to the Respondent No.1 herein.*
4. *It is necessary to note that the said land was mortgaged with Union Bank of India i.e. the Respondent No.2 and Tata Motors Finance Solutions Limited had a second charge on the said property. The said charge was duly registered with MIDC.*

Respondent No.1 was constrained to approach the Hon'ble High Court invoking extraordinary jurisdiction under Article 226

5. *The Respondent No. 1 had approached Debt Recovery Tribunal no 1- Mumbai challenging Auction Proceedings initiated by Respondent no 3 whereby upon urgent mentioning, Securstisation Application no 46/2022 was placed for urgent hearing on 18th June 2023 along with Connected Applications, i.e. Application for Right to Redemption. Despite various hearings taking place,*

*where on multiple occasions, the Respondent No. 1 informed the DRT that a Demand Draft of Rs. 10 Crores is ready (**And during course of hearing before the Hon'ble DRT Demand Draft totalling Rs. 25,00,00,000/- were ready to be submitted**), and the total amount of Rs. 1,24,00,00,000/- would be paid on or before 31.08.2023, no orders came to be passed by the Hon'ble DRT 1. This was even prior to the Auction Purchaser 1.e. The Petitioner herein, depositing 100% of the Purchase value, and despite the Auction Purchaser not having paid the balance 75% purchase fees.*

6. *It is DRT), relevant to note that before the Mumbai Debt Recovery Tribunal-I (the Respondent No. 1 had carried a draft for Rs. 10 crores and also expressed it willingness to make the balance payment by 31.8.2023 See para 4.31 of Writ Petition at pg. 133 of the SLP (as has been eventually directed by the High Court in the impugned order). Since Respondent No.1, the borrower, has a subsisting right of redemption till a sale certificate is issued (as detailed hereinbelow), it was constrained to approach the High Court by way of a writ petition, as there was a genuine apprehension that the right of redemption would be extinguished pending the hearing and final disposal of the Interim Application in the Secutitization Application No. 46/2022.*

Subsequent events have rendered the SLP infructuous:

7. *The present SLP, at the time of its filing, has been rendered infructuous due to the following events.*
8. *That after the impugned order was dictated in open court on 17.8.2023 and subsequently uploaded on the website of Hon'ble Bombay High Court on 26.8.2023, the following developments have taken place:*
    a. *The Respondent No.1 and Respondent no.2 transferred an amount of Rs. 104 Crores to the Respondent No. 3 i.e. Union Bank of India vide RTGS, having UTR No. HDFCR52023082882894716.*
    b. *This was followed by the Respondent No.3 1.e. Union Bank of India issuing a No Dues Certificate dated 28.08.2023 thereby acknowledging that the Respondent No.1 does not owe any further amount to the Bank and releasing the personal guarantees as well.*
    c. *Further, after the No Dues Certificate was issued by Respondent No. 3, Respondent No.1 executed a registered Deed of Release with Tata Motors Financial Solutions Limited registered with the Joint Sub Registrar, Thane 8 having registration No. 19283/2023, whereby the second charge that Tata Motors Finance Solutions Limited had on the second property came to be released, pursuant to payment of Rs. 15*

Crores (Rs. 10 Crores on 18.08.2023 and Rs. 5 Crores on 22.08.2023), which came to be duly acknowledged by Tata Motors Finance Solutions Limited.

d. *Following this, the Respondent No. 1 has also entered into a registered Agreement of Assignment of Leasehold Rights for transfer of leasehold rights in the secured asset with M/s Greenscape L.T. Park LLP on 28.8.2023, which came to be registered before the Joint Sub Registrar, Thane 8 having registration No. 19286/2023. Copies of Documents issued/registered/executed subsequent to passing of the Impugned Order are attached herewith as* ***Annexure R-1 (Colly)****.*

9. *Since there has been full compliance of the Impugned Order by the Respondent No.1 herein as well as the Respondent No.3 Bank, the SLP has essentially become infructuous.*
10. *The only issue which remains is the refund of the amount deposited by the Petitioner herein. This is an issue between the Petitioner and the Respondent No.3 Bank and the Respondent No.1 has no reason to come in the way of the refund of the amount to the Petitioner herein.*

11. *There is a specific direction of the Hon'ble High Court that the Respondent Bank shall immediately keep the entire amount of Rs. 105.05 Crores (deposited by the Auction Purchaser/Petitioner herein) in a 'No Lien Interest Bearing Account' and if the Respondent No.1 pays the balance amount of Rs. 104 Crores to the Respondent Bank by 31.8.2023 (which it has), then the Respondent Bank shall refund the amount of Rs. 105.05 Crores deposited by the Auction Purchaser together with accrued interest on or before 7.9.2023.*

The impugned order correctly interprets Section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act,2002 (SARFAESI Act):

12. *During the arguments on 01.9.2023, the main issue of contention that arose was till what stage does the right of redemption survive, more so, in the light of the 2016 Amendment which amended Section 13(8) of the SARFAESI Act, 2002.*
13. *It is stated by the Respondents that the right of redemption is nowhere mentioned in the SARFAESI Act, and one has to refer to Section 60 of the Transfer of Property Act, 1882, which has been interpreted to reserve the right of Mortgagor to redeem the*

property fill the stage of the same being conveyed / transferred to a third party.

14. *This interpretation has been upheld in the landmark case of* ***Nardas Karsondas V/s S.A. Kamtam and Anr [Annexure R-2]*** *(1977) 3 SCC 247 where it has been held that:*

> *"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 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 t redemption. The extinction of 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 right of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale. Therefore, until the sale is complete by registration the mortgagor does not lose right of redemption."*

15. *This position has also been echoed in the case of* ***Mathew Varghese V/s M. Amrithakumar*** *2014 5 SCC 610* ***[Annexure R-3]*** *where this Hon'ble Court has held that upon a combined reading of S. 60, 54 of the Transfer of Property Act and S. 17 of the*

Registration Act, it can be concluded that the extension of the right of redemption comes much later than the sale notice.

16. *Though the decision in Mathew Varghese (supra) was prior to the 2016 Amendment to SARFAESI Act, its applicability has been continued to be held valid even after the amendment to the said Act. A Division Bench of the Hon'ble High Court of Telangana in the case of* ***Concern Readymix V/s Authorized Officer, Corporation Bank and Anr*** *2018 SCC OnLine Hyd 783* ***[Annexure R-4]****, whereby the Hon'ble Court, after juxtaposing the Amended and Unamended provisions of Section 13(8) of the SARFAESI Act, qua the right of redemption available to the Mortgagor held that the Amended S. 13(8) of the SARFAESI Act only puts a restriction on the right of the Mortgagee to deal with the property and does not speak in express terms about the equity of redemption available to the Mortgagor (at para 13).* ***It was further held that 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 be complete in all respects and that holding that the right of redemption would extinguished at the stage of issue of notice under Rule 9(1) would be tantamount to annulling the relevant provision of the Transfer of Property Act, 1862 which do not stand expressly excluded insofar as the question of redemption is concerned (para 14)****. The said judgment was challenged before this Hon'ble Court vide SLP (Civil) Diary No. 28967/2019 and the same came to be dismissed, hence, confirming the said judgment.*

17. *The view expressed in* ***Concern Readymix (supra)*** *was echoed by a Division Bench of the High Court of Punjab and Haryana in the case of* ***M/s Pal Alloys & Metal India Private Limited and others V/s Allahabad Bank and Ors.*** *CWP No. 6402 0£2019 (O & M) dated 23.12.2021* ***[Annexure R-5]*** *wherein the Hon'ble High Court, inter alia, considered the specific issue "(a) till what time and date can the right of redemption of the Mortgage can be exercised by the Mortgagors / Borrowers in the light of the amendment to Section 13 (8) of the SARFAESI Act".*

18. *While answering the said question, the Court considered the report of the Joint Committee on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 (the Report) as well as the law laid down by this Hon'ble Court in Mathew Varghese (supra) and the judgment in Concern Readymix (supra), in order to determine whether the said right of redemption was available up to the date of transfer of the asset or only up to the date of publication of the sale notice. On a consideration of Section 60 of the Transfer of*

Property Act as well as the judgment in Nardas Karsondas (supra), it was observed that:

> *"Thus even if the sale of secured assets is under a special statute like State Financial Corporations Act, there is no deviation from the general principle that the mortgagor's right of redemption is not extinguished till the execution of conveyance."*

19. *It was ultimately held as below:-*

> *"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. A similar view has been taken by this Branch in M/s Hoshiarpur Roller Flour Mill Private Limited and another V/s Punjab National Bank (CWP No. 1440 of 2021).*
>
> *...*
>
> *It would therefore, certainly be available to the Petitioners herein before the issuance of sale certificate in favour of Respondent Nos. 2 and 3. Point (a) is answered accordingly in favour of the Petitioners and against the Respondents."*

20. *The said judgment also considered and distinguished the judgment of this Hon'ble Court in* ***Shakeena and Anr. V/s Bank of India and Ors.*** *(2021) SCC 761* ***[Annexure R-6]*** *holding that that the said case did not consider the concept of redemption u/s 60 of the Transfer of Property Act, 1882. It is submitted that the observations in para 30 of* ***Shakeena*** *are in the nature of obiter dicta as in the said case the auction had concluded prior to the amendment of Section 13(8) and in any event the sale certificate had already been issued. Thus, the question of interpretation of Section 13(8) was not directly in issue.*

Effect of amendment to S. 13(8) of the SARFAESI Act, 2002

21. It was vehemently argued by the Petitioners that the amended provisions of Section 13(8) of the SARFESI Act, 2002 puts a positive restriction upon the Mortgagor to restrict its right of redemption until the date of publication of the notice.

22. A perusal of the Report ***The report of Joint Committee on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 [Annexure R-7]****, more particularly para 24, shows that the proposed amendment to S. 13(8) of the Act was intended to deal with: - "Provisions to stop secured creditor to lease or assignment or sale in the prescribed conditions". The important thing to note is also that the report does not indicate that the Committee had considered the effect of Section 60 of the Transfer of Property Act, 1882, which is a general law regarding redemption of mortgage vis a vis the provisions of SARFAESI.*

23. The focus of the Committee in the said reply is on the obligations of the Mortgagee to not create third party rights up to a certain time-period, but it is silent on the rights of the Mortgagor to exercise its redemption for which Section 60 of the Transfer of Property Act, 1882 is the relevant provision.

24. It is further necessary to note that the non obstante clause in Section 13 specifically excludes only S. 69 and 69A of the Transfer of Property Act, 1882. This section does not specifically include the words "Notwithstanding anything contained in any other Act for the time being in force" which is the standard term used in non obstante clauses. In view thereof, the legislative intent has to be interpreted to only exclude S. 69 and 69A of the Transfer of Property Act, 1862 and the same does not affect the applicability of Section 60 of the Transfer of Property Act, 1862.

25. It is thus humbly submitted that the arguments and contentions of the Petitioner are liable to be rejected. Various High Courts have consistently held that the right of redemption has to be exercised in terms of S. 60 of the Transfer of Property Act, 1862 and not u/s 13 (8) of the SARFAESI, 2002 and the amendment to Section 13(8) does not affect or take away this right in any manner.

It is therefore respectfully submitted that the present case is not a case warranting exercise of this Hon'ble Court's jurisdiction under Article 136 of the Constitution."

121. What can be discerned from the above is that: -

(i) It is true the Borrower had assailed the actions of the Bank under the SARFAESI Act before the DRT by way of S.A. No. 46 of 2022. When the 9th Auction notice came to be issued on 12.06.2023 which the Borrower alleges to have received on 14.06.2023, the same was also challenged in the aforesaid securitization application by way of I.A. No. 2253 of 2023.

(ii) Before the DRT could conclude the proceedings, the Borrower on its own volition moved the High Court by way of its Writ Petition No. 9523 of 2023, wherein the Borrower sought to subsume the entire issue emanating from the S.A. No. 46 of 2022 in the writ petition before the High Court and as a primary relief prayed that either the High Court should decide the same and thereafter allow it to redeem the mortgage or in the alternative the DRT be directed to ultimately decide the issue and then permit it to redeem the mortgage.

(iii) Thereafter, in the proceedings before the High Court, the Borrower voluntarily abandoned its aforesaid prayers and waived the right to pursue the S.A. No. 46 of 2022 before the DRT, irrespective of whether it was able to redeem the mortgage or not. In view of the above, the High Court by its impugned order permitted the Borrower to redeem the mortgage and directed that within a period of 1-week the S.A. No. 46 of 2022 be withdrawn and further clarified that even if the Borrower failed to withdraw the same, the said application would

stand dismissed in light of its order and the Borrower would no longer be permitted to litigate any further in respect of the Secured Asset.

(iv) When the judgment in Main Appeals was reserved by this Court on 01.07.2023, the aforesaid period of 1-week had already elapsed. The Borrower never withdrew the securitization application. The Borrower in its written submissions before this Court claimed that it had already complied with the terms of the impugned order, but conveniently it never withdrew the S.A. No. 46 of 2022 which it was required to.

(v) Pertinently, during the course of hearing of the Main Appeals before this Court the petitioner herein / the successful auction purchaser apart from contending that the Borrower's right to redeem the mortgage had been extinguished under the law, it specifically prayed that not only the impugned order of the High Court be set-aside but that the Bank be directed to issue the sale certificate to the Secured Asset and by its extension confirm the sale in its favour as evinced from its written submissions.

(vi) The Borrower being fully aware of the aforesaid prayers and even after having gone through the written submissions of the petitioner never contended that irrespective of whether its right to redeem the mortgage is available under the law or not, the sale at any cost cannot be confirmed in favour of the petitioner due to alleged illegality in the auction process. Not once did the Borrower raise the issue of there

being no 30 / 15-days' time gap between the notice of sale and the auction nor the issue that as per the terms of the auction, the same was subject to the outcome of the S.A. No. 46 of 2023.

(vii) Remarkably, although the Borrower during the course of hearing of the Main Appeals urged that no indulgence of this Court was warranted as it had already complied with the terms of the High Court's impugned order and that the entire matter had been rendered infructuous, yet at the same time, not once did the Borrower even remotely indicate that it was in the process of withdrawing the S.A. No. 46 of 2023 as evinced from its written submissions.

(viii) Moreover, the Borrower despite being fully aware of the prayer of the petitioner for seeking confirmation of the sale in its favour and issuance of the sale certificate to the Secured Asset both during the course of hearing and in its written submissions which would have rendered the S.A. No. 46 of 2022 infructuous, it never prayed that in the event sale certificate is issued, its right to pursue S.A. No. 46 of 2022 be preserved, or that the sale certificate be made subject to the outcome of the said application.

a. The Decision of this Court in Celir LLP v. Bafna Motors & Ors. (2023 INSC 838) and the Scope of challenge before it.

122. It would now be apposite to understand what was the nature and scope of challenge before this Court in the Main Appeals, and what was ultimately decided in it. As discussed earlier, the Borrower had preferred a writ petition wherein it had sought to subsume the issue arising out of S.A. No. 46 of 2022 pending before the DRT, particularly the challenge to the actions of the Bank under the SARFAESI Act. The writ petition was not a separate remedy distinct from the securitization application pending before the DRT, as the prayers made therein indicate that it was not merely for seeking redemption of mortgage.

123. We say so, because it is not the case that the remedy for redeeming mortgage could not have been a part of the S.A. No. 46 of 2022 nor can it be said that such a remedy was wholly alien to the provisions of the SARFAESI Act, and could not have been granted by the DRT at all.

124. It is no longer *res integra* that Section 17 of the SARFAESI Act, is a complete code that confers upon the DRT the jurisdiction to examine all the steps or measures taken by the secured creditor under the Act and provide remedies to any person aggrieved by any of those measures. By virtue of the said provision the DRT is clothed with a wide range of powers, to determine any issue or aspect pertaining to the SARFAESI proceedings initiated by the secured creditor and further a power to interfere with the same where necessary. Section 17 of the SARFAESI Act provides a broad mechanism

for an efficacious remedy to "any person" who is aggrieved by any of the "measures" taken or proposed to be taken by the secured creditor under the Act. The omnibus provision of Section 17 sub-section (3) is of a wide import and enables the DRT to grant any relief in respect of any action or proceeding under the Act.

125. In ***Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir*** reported in **(2022) 5 SCC 345**, this Court held that where the Borrower is aggrieved by any proceedings initiated under the SARFAESI Act or any action proposed to be taken by a secured creditor, it has to avail the remedy under the SARFAESI Act and no writ petition would lie or be maintainable. The relevant observations read as under: -

> *"18. [...] If proceedings are initiated under the Sarfaesi Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the Sarfaesi Act and no writ petition would lie and/or is maintainable and/or entertainable. [...]"*
>
> (Emphasis supplied)

126. Thus, the remedy for seeking redemption of mortgage was not only available to the Borrower under Section 17 of the SARFAESI Act but was also availed by him, by way of I.A. No. 2339 of 2023 in S.A. No. 46 of 2022. This application for seeking redemption of mortgage was also heard by the DRT for quite some time, and even orders were reserved. However, suddenly, the

Borrower decided to move the High Court for seeking the very same relief that it had sought in the securitization application.

127. As there was virtually no difference between either the scope of proceedings or the prayer sought before the DRT and that before the High Court, once the Borrower had chosen to espouse the same matter already *sub-judice* in one forum before another, in this case the High Court, it was the duty of the Borrower to bring within the fold of its case all issues and grounds in respect of the 9th auction proceedings in the proceedings arising from the writ petition, by virtue of the Doctrine of Election.

128. Once, the Borrower had elected to move the High Court for the very same cause of action and underlying prayers, the moment the same was entertained by the High Court, which it did, the Borrower was precluded from pursuing its remedies before the DRT by way of S.A. No. 46 of 2024, and was duty bound to now espouse it only in the writ proceedings, as otherwise it would tantamount to having a second bite at the cherry and relitigating what it has already litigated.

129. Thus, when the impugned order of the High Court was challenged before this Court in the Main Appeals, the scope of proceedings before us also entailed the issue of validity of the Bank's actions under the SARFAESI Act. As

discussed by us in the foregoing paragraphs of this judgment, that the Borrower for reasons best known to it, never agitated the validity of the proceedings under the SARFAESI Act including the legality of the 9th auction notice. Not once did the Borrower submit either in the course of its arguments or in its written submissions that the very auction process is allegedly illegal and in contravention of the SARFAESI Act.

130. It was in this backdrop, that the decision in the Main Appeals being ***Celir LLP v. Bafna Motors & Ors.*** was rendered by this Court. Since, no challenge had been raised to the measures taken by the Bank under the SARFAESI Act and the 9th auction notice by the Borrower, this Court proceeded to determine only the issue of right of redemption under Section 13 sub-section (8) of the SARFAESI Act. Accordingly, this Court held that 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. However, under the amended provisions of Section 13(8) of the SARFAESI Act the right of the borrower to redeem the secured asset would be available only till the date of publication of the notice under Rule 9(1) of the SARFAESI Rules and not till the completion of the sale or transfer of the secured asset in favour of the auction purchaser.

131. This Court thereafter proceeded to determine the Borrower's right of redemption and after going through the facts of the case, held that since at

the time of redemption of mortgage the notice of auction had already been published, it was impermissible for the High Court to allow the Borrower to redeem the same.

132. Thus, this Court only went on to determine the Borrower's right to redeem the mortgage and having done so, this Court *inter-alia* set-aside the impugned order of the High Court and in view of the fact that the Bank had already confirmed the sale in favour of the petitioner, and in the absence of any challenge to the auction process, further directed that the sale certificate of the Secured Asset be issued to the petitioner. The operative portion of the said decision reads as under: -

> *"106. In the result, both the appeals succeed and are hereby allowed.*
>
> *107. The impugned judgment and order passed by the High Court is hereby set aside.*
>
> *108. The respondent Bank shall refund the entire amount deposited by the borrowers i.e., an amount of Rs.129 crore paid by them in lieu of the redemption of mortgage of the secured asset at the earliest. The appellant herein shall pay an additional amount of Rs. 23.95 crore to the Bank within a period of one week from today and subject to such deposit, the Bank shall issue the sale certificate in accordance with Rule 9(6) of the Rules of 2002.*
>
> *109. The pending applications if any shall stand disposed of."*

133. It is material to note that even in the review petition preferred by the Borrower including the application for additional grounds of review therein,

the contention of the Borrower in the present contempt petition as to the illegality of the SARFAESI proceedings including the 9th auction or the contravention of the 30 / 15 days statutory period, does not figure. In fact, the Borrower in the review petition did not even lay any challenge to the direction of this Court to issue the sale certificate in the Main Appeals. No averment at all was made in countenance of the S.A. No. 46 of 2022, or as regards the measures of the Bank under the SARFAESI Act, the 9th auction notice issued in lieu thereof, or the approval of the sale of the Secured Asset by issuance of the sale certificate in its respect. The said review petition was ultimately dismissed by this Court vide its order dated 18.07.2024.

134. Thus, the Borrower having admittedly failed to even remotely indicate the aforesaid issues to this Court let alone contend it in both the Main Appeals and the review thereof, the only question that now remains to be answered is whether it is permissible for the Borrower to raise it and again litigate the same subsequently either in the present contempt petition or in the S.A. No. 46 of 2022 which is still pending before the DRT.

b. The 'Henderson' Principle as a corollary of Constructive Res-Judicata.

135. The 'Henderson Principle' is a foundational doctrine in common law that addresses the issue of multiplicity in litigation. It embodies the broader

concept of procedural fairness, abuse of process and judicial efficiency by mandating that all claims and issues that could and ought to have been raised in a previous litigation should not be relitigated in subsequent proceedings. The extended form of *res-judicata* more popularly known as 'Constructive Res Judicata' contained in Section 11, Explanation VII of the CPC originates from this principle.

136. In ***Henderson v. Henderson*** reported in **[1843] 3 Hare 999**, the English Court of Chancery speaking through Sir James Wigram, V.C. held that where a given matter becomes the subject of litigation and the adjudication of a court of competent jurisdiction, the parties so litigating are required to bring forward their whole case. Once the litigation has been adjudicated by a court of competent jurisdiction, the same parties will not be permitted to reopen the *lis* in respect of issues which might have been brought forward as part of the subject in contest but were not, irrespective of whether the same was due to any form of negligence, inadvertence, accident or omission. It was further held, that principle of *res judicata* applies not only to points upon which the Court was called upon by the parties to adjudicate and pronounce a judgement but to every possible or probable point or issue that properly belonged to the subject of litigation and the parties ought to have brought forward at the time. The relevant observations read as under: -

> *"In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.* [...]*"*
>
> (Emphasis supplied)

137. The above proposition of law came to be known as the 'Henderson Principle' and underwent significant evolution, adapting to changing judicial landscapes and procedural requirements. The House of Lords in ***Johnson v. Gore Wood & Co*** reported in **[2002] 2 AC 1**, upon examining the 'Henderson Principle' authoritatively approved it with the following observations: -

(i) Lord Bingham of Cornhill integrated the principle with the broader doctrine of abuse of process and held that the bringing of a claim or the raising of a defence in later proceedings which ought to have been raised earlier will not always be hit by this principle, but rather will apply where such point is sought to be raised as an additional or collateral attack on a previous decision and the bringing forth of such

ground amounts to misusing or abusing the process of the court or as a means for unjust harassment of a party. The relevant observations read as under: -

> *" Henderson v Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same : that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not […]"*
>
> (Emphasis supplied)

(ii) Lord Millett construing the Principle held that it does not belong to the doctrine of *res-judicata* in the strict sense but rather was analogous to the doctrine, as it goes a step further to encompass even those proceedings that either culminated into a settlement or issues which had never been adjudicated previously in order to protect the process of the court from abuse and the defendant from oppression. The relevant observations read as under: -

> *"As the passages which I have emphasised indicate, Sir James Wigram V-C did not consider that he was laying down a new principle, but rather that he was explaining the true extent of the existing plea of res judicata. Thus he was careful to limit what he was saying to cases which had proceeded to judgment, and not, as in the present case, to an out of court settlement. Later decisions have doubted the correctness of treating the principle as an application of the doctrine of res judicata, while describing it as an extension of the doctrine or analogous to it … But these various defences [res judicata, issue or cause of action estoppel] are all designed to serve the same purpose : to bring finality to litigation and avoid the oppression of subjecting a defendant unnecessarily to successive actions. <u>While the exact relationship between the principle expounded by Sir James Wigram V-C and the defences of res judicata and cause of action and issue estoppel may be obscure, I am inclined to regard it as primarily an ancillary and salutary principle necessary to protect the integrity of those defences and prevent them from being deliberately or inadvertently circumvented</u>.*
>
> *<u>In one respect, however, the principle goes further than the strict doctrine of res judicata or the formulation adopted by Sir James Wigram V-C, for I agree that it is capable of applying even where the first action concluded in a settlement. Here it is necessary to protect the integrity of</u>*

the settlement and to prevent the defendant from being misled into believing that he was achieving a complete settlement of the matter in dispute when an unsuspected part remained outstanding.

However this may be, the difference to which I have drawn attention is of critical importance. It is one thing to refuse to allow a party to relitigate a question which has already been decided; it is quite another to deny him the opportunity of litigating for the first time a question which has not previously been adjudicated upon. This latter (though not the former) is prima facie a denial of the citizen's right of access to the court conferred by the common law and guaranteed by article 6 ... While, therefore, the doctrine of res judicata in all its branches may properly be regarded as a rule of substantive law, applicable in all save exceptional circumstances, the doctrine now under consideration can be no more than a procedural rule based on the need to protect the process of the court from abuse and the defendant from oppression [...]"

(Emphasis supplied)

138. In ***Virgin Atlantic Airways Ltd. v. Zodiac Seats UK Ltd.*** reported in **[2014] AC 160** Lord Sumption JSC further expounded the 'Henderson Principle' as although separate and distinct from cause of action estoppel or res judicata yet having the same underlying public interest that there should be finality in litigation and that a party should not be twice vexed in the same matter. The relevant observations read as under: -

"The principle in Henderson v Henderson has always been thought to be directed against the abuse of process involved in seeking to raise in subsequent litigation points which could and should have been raised before. There was nothing controversial or new about this notion when it was expressed by Lord Kilbrandon in the Yat Tung case [1975] AC 581. The point has been taken up in a large number of subsequent decisions, but for present purposes it is enough to refer to the most important of

them, Johnson v Gore-Wood & Co [2002] 2 AC 1, in which the House of Lords considered their effect. This appeal arose out of an application to strike out proceedings on the ground that the plaintiffs claim should have been made in an earlier action on the same subject matter brought by a company under his control. Lord Bingham of Cornhill took up the earlier suggestion of Lord Hailsham of St Marylebone LC in Vervaeke (formerly Messina) v Smith [1983] 1 AC 145, 157 that the principle in Henderson v Henderson was "both a rule of public policy and an application of the law of res judicata". He expressed his own view of the relationship between the two at p. 31 as follows: "Henderson v Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole"."

(Emphasis supplied)

139. Even in a common law action it was said by Blackburn, J.: "*I incline to think that the doctrine of res judicata applies to all matters which existed at the time of giving of the judgment, and which the party had an opportunity of bringing before the Court*." [See: ***Newington* v. *Levy*** reported in **(1870) 6 CP 180 (J)**].

140. The fundamental policy of the law is that there must be finality to litigation. Multiplicity of litigation benefits not the litigants whose rights have been determined, but those who seek to delay the enforcement of those rights and prevent them from reaching the rightful beneficiaries of the adjudication. The Henderson Principle, in the same manner as the principles underlying *res*

judicata, is intended to ensure that grounds of attack or defence in litigation must be taken in one of the same proceeding. A party which avoids doing so does it at its own peril. In deciding as to whether a matter might have been urged in the earlier proceedings, the court must ask itself as to whether it could have been urged. In deciding whether the matter ought to have been urged in the earlier proceedings, the court will have due regard to the ambit of the earlier proceedings and the nexus which the matter bears to the nature of the controversy. In holding that a matter ought to have been taken as a ground of attack or defence in the earlier proceedings, the court is indicating that the matter is of such a nature and character and bears such a connection with the controversy in the earlier case that the failure to raise it in that proceeding would debar the party from agitating it in the future. The doctrine itself is based on public policy flowing from the age-old legal maxim *interest reipublicae ut sit finis litium* which means that in the interest of the State there should be an end to litigation and no party ought to be vexed twice in a litigation for one and the same cause.

141. The Henderson Principle was approvingly referred to and applied by this Court in ***State of U.P. v. Nawab Hussain*** reported in **(1997) 2 SCC 806** as the underlying principle for *res-judicata* and constructive *res-judicata* for assuring finality to litigation. The relevant observations read as under: -

"3. The principle of estoppel per rem judicatam is a rule of evidence. As has been stated in Marginson v. Blackburn Borough Council [(1939) 2 KB 426 at p. 437], it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action". This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata.

4. But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process and Somervell, L.J., has answered it as follows in Greenhalgh v. Mallard [(1947) All ER 255 at p. 257] : "I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.

This is therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general

principle of subduing a cantankerous litigant. That is why this other rule has some times been referred to as constructive res judicata which, in reality, is an aspect or amplification of the general principle."

(Emphasis supplied)

142. This Court in ***Devilal Modi* v. *Sales Tax Officer, Ratlam & Ors.*** reported in **AIR 1965 SC 1150**, held that if the underlying rule of constructive *res judicata* is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time, and would be inconsistent with considerations of public policy. The relevant observations read as under: -

"8. [...] the rule of constructive res judicata which is pleaded against him in the present appeal is in a sense a somewhat technical or artificial rule prescribed by the Code of Civil Procedure. This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy [...]"

(Emphasis supplied)

143. In ***Shankara Coop. Housing Society Ltd. v. M. Prabhakar***, reported in **(2011) 5 SCC 607**, this Court held that the ground of non-compliance of statutory provision which was very much available to the parties to raise but did not raise it as one of the grounds, cannot be raised later on and would be

hit by the principles analogous to constructive res judicata. The relevant observations read as under: -

> *"89. In the present case, it is admitted fact that when the contesting respondents filed WP No. 1051 of 1966, the ground of non-compliance with statutory provision was very much available to them, but for the reasons best known to them, they did not raise it as one of the grounds while challenging the Notification dated 11-12-1952 issued under the Evacuee Property Act. In the subsequent writ petition filed in the year 1990, initially, they had not questioned the legality of the notification, but raised it by filing an application, which is no doubt true, allowed by the High Court. In our view, the High Court was not justified in permitting the petitioners therein to raise that ground and answer the same since the same is hit by the principles analogous to constructive res judicata."*
>
> (Emphasis supplied)

144. From the above exposition of law, it is clear that the 'Henderson Principle' is a core component of the broader doctrine of abuse of process, aimed at enthusing in the parties a sense of sanctity towards judicial adjudications and determinations. It ensures that litigants are not subjected to repetitive and vexatious legal challenges. At its core, the principle stipulates that all claims and issues that could and should have been raised in an earlier proceeding are barred from being raised in subsequent litigation, except in exceptional circumstances. This rule not only supports the finality of judgments but also underscores the ideals of judicial propriety and fairness.

145. There are, four situations where in second proceedings between the same parties doctrine res judicata as a corollary of the principle of abuse of process

may be invoked: (i) cause of action estoppel, where the entirety of a decided cause of action is sought to be relitigated; (ii) issue estoppel or, "decided issue estoppel," where an issue is sought to be relitigated which has been raised and decided as a fundamental step in arriving at the earlier judicial decision; (iii) extended or constructive res judicata i.e., "unraised issue estoppel," where an issue is sought to be litigated which could, and should, have been raised in a previous action but was not raised; (iv) a further extension of the aforesaid to points not raised in relation to an issue in the earlier decision, as opposed to issues not raised in relation to the decision itself.

146. As part of the broader rule against abuse of process, the Henderson principle is rooted in the idea of preventing the judicial process from being exploited in any manner that tends to undermine its integrity. This idea of preventing abuse of judicial process is not confined to specific procedure rules, but rather aligned to a broader purport of giving *quietus* to litigation and finality to judicial decisions. The essence of this rule is that litigation must be conducted in good faith, and parties should not engage in procedural tactics that fragment disputes, prolong litigation, or undermine the outcomes of such litigation. It is not a rigid rule but rather a flexible principle to prevent oppressive, unfair, or detrimental litigation.

147. We are conscious of the fact, that ordinarily this principle has been applied to instances where a particular plea or ground was not raised at any stage of the proceedings, but were later sought to be raised. However, it must be borne in mind that construing this rule in a hyper-technical manner or through any strait-jacket formula will amount to taking a reductive view of this broad and comprehensive principle.

148. Although in the present case, the Borrower had raised the issue of the validity of the measures taken by the Bank under the SARFAESI Act and the legality of the 9th auction conducted it in the earlier stages albeit in a different proceeding, yet its conduct of having conveniently abandoned the same in a different proceeding elected by it for the same cause of action and then later reagitating it in the pretence that the two proceedings were distinct, is nothing but a textbook case of abuse of process of law.

149. Piecemeal litigation where issues are deliberately fragmented across separate proceedings to gain an unfair advantage is in itself a facet of abuse of process of law and would also fall foul of this principle. Merely because one proceeding initiated by a party differs in some aspects from another proceeding or happens to be before a different forum, will not make the subsequent proceeding distinct in nature from the former, if the underlying subject matter or the seminal issues involved remains substantially similar to

each other or connected to the earlier subject matter by a certain degree, then such proceeding would tantamount to ‘relitigating’ and the Henderson Principle would be applicable.

150. Parties cannot be allowed to exploit procedural loopholes and different foras to revisit the same matters they had deliberately chosen not to pursue earlier. Thus, where a party deliberately withholds certain claims or issues in one proceeding with the intention to raise them in a subsequent litigation disguised as a distinct or separate remedy or proceeding from the initial one, such subsequent litigation will also fall foul of this principle.

151. Similarly, where a plea or issue was raised in earlier proceedings but later abandoned it is deemed waived and cannot be relitigated in subsequent. Allowing such pleas to be resurrected in later cases would not only undermine the finality of judgments but also incentivize strategic behaviour, where parties could withdraw claims in one case with the intention of reintroducing them later. proceedings. Abandonment signifies acquiescence, barring its reconsideration in subsequent litigation. This ensures that judicial processes are not misused for tactical advantage and that litigants are held accountable for their procedural choices. Parties must litigate diligently and in good faith, presenting their entire case at the earliest opportunity.

152. The Henderson principle operates on the broader contours of judicial propriety and fairness, ensuring that the judicial system remains an instrument of justice rather than a platform for procedural manipulation. Judicial propriety demands that courts maintain the finality and integrity of their decisions, preventing repeated challenges to settled matters. Once a matter has been adjudicated, it should not be revisited unless exceptional circumstances warrant such reconsideration. Repeated litigation of the same issue not only wastes judicial resources but also subjects the opposing party to unnecessary expense and harassment. judicial processes are not merely technical mechanisms but are rooted in principles of equity and justice.

153. Both logic and principle support the approach that the judicial determination of an entire cause of action is in fact the determination of every issue which is fundamental to establishing the entire cause of action. Thus, the assertion that the determination is only on one of the issues is flawed as it is nothing but an indirect way of asserting that the whole judgment is flawed and thereby relitigating the entire cause of action once more. The effect of a judicial determination on an entire cause of action is as if the court had made declarations on each issue fundamental to the ultimate decision.

154. In the present case, the very issue of the validity of the measures taken by the Bank under the SARFAESI Act and by it the legality of the 9th auction

proceedings was innately and inextricably linked to the proceedings before this Court in the Main Appeals. We say so, because: -

(i) The very issue of the cut-off date for exercising the right of redemption under Section 13 sub-section (8) of the SARFAESI Act entailed as a natural corollary to it, the issue of validity of the SARFAESI proceedings, at least in respect of the 9th auction notice dated 12.06.2023. When the Main Appeals were being heard by this Court, the Borrower was well aware that the issue before this Court was whether the right of redemption extinguishes upon the publication of sale notice or upon the transfer of the secured asset, and as such if at all such right were to extinguish upon the publication of the sale notice, it by default involved the issue whether such notice was valid or non-est. Being so, the very issue of validity of the 9th auction notice and the proceedings thereto properly belonged to the subject of litigation in the Main Appeals before this Court and ought to have been brought forward as part of the subject in contest.

(ii) Moreover, since there was virtually no difference between the prayer sought before the DRT and that before the High Court, once the Borrower had chosen to espouse the same matter already *sub-judice* in DRT before the High Court, it was the duty of the Borrower to bring within the fold of its case all issues and grounds in respect of the 9th auction proceedings in the proceedings arising from the writ petition,

by virtue of the Doctrine of Merger and Election. Since the prayers that were sought before the DRT had been merged with the prayers before the High Court, the scope of proceedings of the Main Appeals encompassed the issue of validity of the Bank's actions under the SARFAESI Act and by extension the 9th auction notice dated 12.06.2023 which the Borrower for reasons best known to it, and such now cannot be permitted to raise these issued when they ought to have been raised in the Main Appeals. In this regard we may refer to the decision of this Court in ***Vodafone Idea Cellular Ltd. v. Ajay Kumar Agarwal*** reported in **(2022) 6 SCC 496** which held that as per the Doctrine of Election, once a party has elected to choose remedy under one forum, again the same cause of action cannot be challenged before another forum: -

> *"25. The above position was reiterated in IREO Grace Realtech (P) Ltd. v. Abhishek Khanna13 by a three-Judge Bench of this Court, of which one of us (D.Y. Chandrachud, J.) was a part. Indu Malhotra, J., speaking for the Bench invoked the doctrine of election, which provides that when two remedies are available for the same relief, the party at whose disposal such remedies are available, can make the choice to elect either of the remedies as long as the ambit and scope of the two remedies is not essentially different. These observations were made in the context of an allottee of an apartment having the choice of initiating proceedings under the 1986 Act or the RERA."*
>
> (Emphasis supplied)

(iii) Furthermore, by virtue of the Doctrine of Election, the Borrower cannot be permitted to pursue two inconsistent remedies, once the Borrower had availed the remedy to redeem its mortgage and pay the dues sought to be recovered by way of the SARFAESI proceedings initiated by the Bank and having failed in doing so, it now cannot be permitted to challenge those very SARFAESI proceedings. A litigant cannot approbate or reprobate at the same time. Election is the obligation imposed upon a party by Courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both. For instance, if in a will, X bequeaths property owned by Y to Z while giving Y a substantial gift. Y must choose to either (i) accept the gift and let Z retain the property or (ii) reject the gift and assert ownership of the property, but can certainly not pursue both the remedies, and as such, the Borrower cannot be permitted to have its cake and eat it as well. In this regard we may refer to the decision of this Court in ***Joint Action Committee of Air Line Pilots' Assn. of India (ALPAI) & Ors. v. DGCA*** reported in **(2011) 5 SCC 435** wherein it was held as under: -

> *"12. The doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law,*

a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily."

(Emphasis supplied)

(iv) The premise on which the writ petition came to be filed by the Borrowers before the High Court is also significant. The Borrower in the writ petition contended that they have an apprehension that the DRT may reject their redemption application and the entire matter would become infructuous as the Bank at that point of time had already accepted the entire sale consideration for the auction from the petitioners and as such may likely issue the Sale Certificate to the Secured Asset. Thus, the Borrower's themselves were under the impression and understanding that once the Sale Certificate is issued, the sale to the Secured Asset becomes absolute and would in turn render the entire matter infructuous. In such circumstances, the contention of the Borrower as-well as the Subsequent Transferee that the Sale Certificate that was issued in pursuance of the decision in the Main Appeals was always subject to the outcome of the S.A. No. 46 of 2022 pending before the DRT, is nothing but an after-thought which the Borrower now seeks to espouse having lost in the Main Appeals and as such the said contention deserves to be rejected.

(v) Even though the petitioner had specifically prayed for the issuance of the Sale Certificate to the Secured Asset, not once did the Borrower dispute the same or assert that such certificate would be contingent to on the outcome of the DRT proceedings. The Borrower neither in the Main Appeals nor in the review thereto raised the issue of validity of the 9th auction notice or brought to the notice of this court the terms of the auction, more particularly that such auction was subject to the outcome of the S.A. No. 46 of 2022. Having admittedly failed to do so, the espousal of the aforesaid contention by the Borrower now is nothing but an abuse of process and an attempt to indirectly circumvent the decision of this Court in the Main Appeals and collaterally challenge the determination of rights therein.

(vi) Furthermore, the direction of this Court in the Main Appeals for issuance of Sale Certificate conferred absolute ownership to the petitioner to the Secured Asset, in view of the fact that: -: -

a. The impugned order passed by the High Court had been set-aside in *toto*.
b. It was held that the Borrower could not have redeemed its mortgage upon publication of the 9th auction notice.
c. The Bank was further directed to refund the amount paid by the Borrower towards redemption.
d. It was also held that the Bank after having confirmed the sale under Rule 9(2) of the Rules of 2002 could not have withhold the sale certificate to the Secured Asset.

In view of the above, it is clear as a noon day that this Court never held that the Sale Certificate to be issued to the petitioner was subject to the

outcome of the DRT proceedings. As such, once the sale of the Secured Asset under Section 13(4) of the SARFAESI Act ended in issuance of a Sale Certificate as per Rule 9 (7) of the SARFAESI Rules, such sale was complete and absolute.

(vii) Lastly, this court in its decision in the Main Appeals by no means either preserved the right or permitted the Borrower to continue pursuing the proceedings in S.A. No. 46 of 2022 pending before the DRT. This is in view of the maxim *Expressio Unius Est Exclusio Alterius* i.e., the expression of one thing is the exclusion of another. Where a court consciously and specifically grants certain reliefs but does not advert to other reliefs or rights, the relief so expressly provided necessarily leads to the implied exclusion of the other reliefs and rights. Thus, when this Court directed the issuance of the Sale Certificate it necessarily excluded the right to pursue the DRT proceedings.

(viii) Mere reference to the pendency of the DRT Proceedings in the judgment by no means could lead to the inference that this Court had preserved the rights of the Borrower herein to pursue the same. One cannot assume or infer any right by referring to a stray sentence here and a stray sentence there in the judgment. It is trite that judgments of courts are not to be construed as statutes.

ii. Applicability of Lis Pendens in the absence of any registration as required under the State Amendment to Section 52 of the TPA.

155. The term "*lis pendens*" as explained in the Law Lexicon is as under: -

> "*Lis means a suit, action controversy, or dispute, and lis pendens means a pending suit. The doctrine denotes those principles and rules of law which define and limit the operation of the common-law maxim pendente lite nihil innovetur, that is, pending the suit nothing should be changed.*
>
> *A pending suit.*
>
> *As soon as proceedings are commenced to recover or charge some specific property [Ex parte Thornton (1867)2 Ch.p.178] there is "lis pendens" - a pending suit, the consequence of which is that until the litigation is at an end neither litigant can deal with the property to the prejudice of the other."*

156. As per the Doctrine of *lis pendens*, nothing new can be introduced during the pendency of a petition and if at all anything new is introduced, the same would also be subject to the final outcome of the petition, which would decide the rights and obligations of the parties.

157. The doctrine of *lis pendens* is duly recognized in Section 52 of the TPA which states that during the pendency in any court of any suit in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings. The explanation to the provision states that for the purposes of the Section, the pendency of a suit or proceedings shall be deemed to

commence from the date of the presentation of the plaint or institution of the proceeding in a Court, and shall continue until the suit or proceeding is disposed by a "final decree or order" and complete satisfaction of the order is obtained, unless it has become unobtainable by reason of the expiry of any period of limitation. The said provision reads as under: -

> *"**52. Transfer of property pending suit relating thereto. —** During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.*
>
> *Explanation.-- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."*

158. The following conditions ought to be fulfilled for the doctrine of *lis pendens* to apply: -

i. There must be a pending suit or proceeding;

ii. The suit or proceeding must be pending in a competent court;

iii. The suit or proceeding must not be collusive;

iv. The right to immovable property must be directly and specifically in question in the suit or proceeding;

v. The property must be transferred by a party to the litigation; and

vi. The alienation must affect the rights of any other party to the dispute.

159. In short, the doctrine of *lis pendens*, which Section 52 of the TPA encapsulates, bars the transfer of a suit property during the pendency of litigation. The only exception to the principle is when it is transferred under the authority of the court and on terms imposed by it. Where one of the parties to the suit transfers the suit property (or a part of it) to a third-party, the latter is bound by the result of the proceedings even if he did not have notice of the suit or proceeding.

160. In the landmark decision of the English Court of Chancery in ***Bellamy v. Sabine*** reported in **(157) 1 De G&J 566**, Lord Turner underscored and explained the rationale of the principle underlying *lis pendens* and observed that if any alienation or material change to the subject matter during the pendency of a proceeding were permitted to prevail, it would defeat the very course of such proceedings before the courts. The relevant observations read as under: -

> *"It is, as I think, a doctrine common to the courts both of Law and Equity and rests, as I apprehend, upon this foundation that it would plainly be impossible that any action or suit could be*

brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendants alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceedings."

(Emphasis supplied)

161. In ***Jayaram Mudaliar v. Ayyaswami*** reported in **AIR 1973 SC 569** this Court explained that where any proceeding in respect of a property is pending, the doctrine of *lis pendens* vests the courts with the control or dominion over such subject-matter so that no party or person may remove the subject-matter outside of the power of the court to deal with it in accordance with law and thereby render the proceedings infructuous. The relevant observations read as under: -

"14. The background of the provision set out above was indicated by one of us (Beg, J.,) in Jayaram Mudaliar v. Ayyaswami [(1972) 2 SCC 200, 217 : AIR 1973 SC 569] . There, the following definition of the lis pendens from Corpus Juris Secundum (Vol. LIV, p. 570) was cited: "Lis pendens literally means a pending suit, and the doctrine of lis pendens has been defined as the jurisdiction, power, or control which a court acquires over property involved in a suit pending the continuance of the action, and until final judgment therein."

It was observed there: "Expositions of the doctrine indicate that the need for it arises from the very nature of the jurisdiction of Courts and their control over the subject-matter of litigation so that parties litigating before it may not remove any part of the subject-matter outside the power of the Court to deal with it and thus make the proceedings infructuous."

(Emphasis supplied)

162. In the present case, it has been canvassed on behalf of the Subsequent Transferee that it is a bona-fide third party purchaser of the Secured Asset since it was neither arrayed as a party to proceedings in the Main Appeals nor issued a notice of the said proceedings either by the petitioner or by the Bank.

163. In ***Sanjay Verma v. Manik Roy*** reported in **(2006) 13 SCC 608** this Court held that the principle of *lis pendens* enshrined in Section 52 of the TPA is not only based on equity, good conscience and justice but is also a principle of public policy and as such no party can claim exemption from the application of this doctrine on the ground of bona fide or good faith. The relevant observations read as under: -

> *"12. The principles specified in Section 52 of the TP Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of the TP Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court."*
>
> (Emphasis supplied)

164. In another decision of this Court in ***Guruswamy Nadar v. P. Lakshmi Ammal*** reported in **(2008) 5 SCC 796** it was held that the principle of *lis pendens* incorporated in Section 52 of the TPA will apply irrespective of whether the subsequent purchaser had bought the property, which is a subject matter of a pending proceeding, in good faith or not. The relevant observations read as under: -

> *"9. Section 19 of the Specific Relief Act clearly says subsequent sale can be enforced for good and sufficient reason but in the present case, there is no difficulty because the suit was filed on 3-5-1975 for specific performance of the agreement and the second sale took place on 5-5-1975. Therefore, it is the admitted position that the second sale was definitely after the filing of the suit in question. Had that not been the position then we would have evaluated the effect of Section 19 of the Specific Relief Act read with Section 52 of the Transfer of Property Act. But in the present case it is more than apparent that the suit was filed before the second sale of the property. Therefore, the principle of lis pendens will govern the present case and the second sale cannot have the overriding effect on the first sale.*
>
> *xxx xxx xxx*
>
> *15. So far as the present case is concerned, it is apparent that the appellant who is a subsequent purchaser of the same property, has purchased in good faith but the principle of lis pendens will certainly be applicable to the present case notwithstanding the fact that under Section 19(b) of the Specific Relief Act his rights could be protected."*
>
> (Emphasis supplied)

165. Similarly in a recent decision of this Court in ***Chander Bhan (D) through Lr. Sher Singh v. Mukhtiar Singh & Ors.*** reported in **2024 INSC 377** it was held that once the transaction in question is found to be illegal due to the doctrine of *lis pendens*, any defence of the subsequent transferee that they

are a *bona-fide* purchaser is liable to be rejected. The relevant observations read as under: -

> *"21. Once it has been held that the transactions executed by the respondents are illegal due to the doctrine of lis pendens the defence of the respondents 1-2 that they are bonafide purchasers for valuable consideration and thus, entitled to protection under Section 41 of the Act of 1882 is liable to be rejected."*
>
> (Emphasis supplied)

166. Thus, the question to be examined is whether the transfer of the secured asset in favour of the Subsequent Transferee is hit by *lis pendens* or not. It is an undisputed fact that on 25.08.2023 Special Leave Petition Nos. 19523-19524 of 2023 (later renumbered as Civil Appeal Nos. 5542-5543 of 2023) came to be filed by the petitioner challenging the impugned order dated 17.08.2023 passed by the High Court permitting the Borrower herein to redeem the mortgage created over the Secured Asset. It is also not in dispute that on 28.08.2023 the Borrower pursuant to the aforesaid order of the High Court redeemed the mortgage and transferred the said property to the Subsequent Transferee herein on the very same day by executing the aforesaid Assignment Agreement. It is also undisputed that the transfer of the Secured Asset in favour of the Subsequent Transferee was effected by the Borrower on the strength of its right of redemption pursuant to the High Court's impugned order dated 17.08.2023. Thus, admittedly, when the mortgage was redeemed and the Secured Asset was transferred to the Subsequent Transferee by way of the Assignment Agreement dated 28.08.2023, Special

Leave Petition Nos. 19523-19524 of 2023 challenging the exercise of such right of redemption was already filed and pending before this Court.

167. In ***M/s Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy & Ors.*** reported in **2024 INSC 861** this Court held that doctrine of *lis pendens* kicks in the moment a proceeding is instituted / filed irrespective of whether such filing is still defective or notice is yet to be issued by the court. It further held that any transfer made during the pendency of such proceeding would be subject to the final result of the litigation or in other words would be hit by *lis pendens* under Section 52 of the TPA. The relevant observations read as under: -

> *"49. The purpose of lis pendens is to ensure that the process of the court is not subverted and rendered infructuous. In the absence of the doctrine of lis pendens, a defendant could defeat the purpose of the suit by alienating the suit property. This purpose of the provision is clearly elucidated in the explanation clause to Section 52 which defines "pendency". Amending Act 20 of 1929 substituted the word "pendency" in place of "active prosecution". The Amending Act also included the Explanation defining the expression "pendency of suit or proceeding". "Pendency" is defined to commence from the "date of institution" until the "disposal". The argument of the respondents that the doctrine of lis pendens does not apply because the petition for review was lying in the registry in a defective state cannot be accepted. The review proceedings were "instituted" within the period of limitation of thirty days. The doctrine of lis pendens kicks in at the stage of "institution" and not at the stage when notice is issued by this Court. Thus, Section 52 of the Transfer of Property Act would apply to the third-party purchaser once the sale was executed after the review petition was instituted before this Court. Any transfer that is made during the pendency is subject to the final result of the litigation."*

(Emphasis supplied)

168. Since, in the present case the Special Leave Petitions were already instituted and pending before this Court as on 28.08.2023 i.e., the date of execution of the Assignment Agreement for the transfer of the Secured Asset in favour of the Subsequent Transferee, the said Assignment Agreement dated 28.08.2023 and the transfer thereto is beyond a shadow of doubt hit by *lis pendens*.

169. It has been contended by the Subsequent Transferee that Section 52 of the TPA has a modified application in Maharashtra i.e., the area in which the said property is situated by virtue of the State Amendment made to Section 52 of the TPA by the Bombay Amendment Act, 1939 (Act XIV of 1939). The relevant provision as amended reads as under: -

> *"**52. Transfer of property pending suit relating thereto. —** (1) During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir established beyond such limits by the Central Government, of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, if a notice of the pendency of such suit or proceeding is registered under Section 18 of the Indian Registration Act, 1908, the property after the notice is so registered cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.*

(2) Every notice of pendency of a suit or proceeding referred to in sub-section (1) shall contain the following particular, namely:
(a) the name and address of the owner of immovable property or other person whose right to the immovable property is in question;
(b) the description of the immovable property the right to which is in question;
(c) the Court in which the suit or proceeding is pending;
(d) the nature and title of the suit or proceeding; and
(e) the date on which the suit or proceeding was instituted.

Explanation. — For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceedings in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and compete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

(Emphasis supplied)

170. It was submitted on behalf of the Subsequent Transferee that in view of the aforesaid state amendment to Section 52 of the TPA, in order to invoke *lis pendens* under the said provision it is mandatory as per sub-section (1) that a notice of pendency of a suit or proceeding is registered in respect of the property which is the subject-matter of such proceeding in the manner laid down in sub-section (2) and in the event no such notice of pendency is registered then *lis pendens* will not be applicable. It was further submitted that since in the present case admittedly there was no registration of notice of pendency by the petitioner in respect of the Secured Asset, the Assignment

Agreement dated 28.08.2023 and the transfer of the said property in pursuance thereto is not hit by *lis pendens*.

171. We have carefully gone through the aforesaid state amendment made to Section 52 of the TPA. The amended Section 52 sub-section (1) of the TPA casts upon a party who is claiming any right to a property which is a subject-matter of any pending suit or proceeding an additional duty to register a notice of pendency in respect of such property so as to caution and put to notice any third-party who might otherwise be unaware of such proceeding or litigation despite the best of due diligence either due to inadvertence or deliberate misleading by one of the parties to the *lis* and as result might be genuinely considering to purchase or acquire any right in the subject-matter proceeding. The requirement of registration of notice of pendency is to prevent any undue or unwarranted hardship to such third-parties who even after a reasonable due diligence have *bona-fidely* purchased the property believing it to be free from the encumbrances of any pending proceeding only to later face the adverse consequence of losing their rights by a mechanical application of *lis pendens*.

172. This additional requirement of registration of notice of pendency is for the benefit of the party claiming any right in such subject-matter property and also for the benefit of any third-party interested in such subject-matter

property by enabling the former to claim the benefit of *lis pendens* as an absolute right after having duly taken steps towards ensuring that the public is well-aware of the impeding litigation in respect of such property by registering a notice of pendency and to enable the latter to ascertain the veracity of title of such property by exercise of its due diligence. Although, the said provision is for the benefit of the third-party, yet such subsequent purchasers cannot as a matter of absolute right claim any title to such property solely on the ground of want of any notice of pendency being registered. To hold otherwise would undermine the object and purpose of the doctrine of *lis pendens* which is based on the principle of equity, good conscience, and public policy and discourage any thwarting or frustration of rights of the parties so litigating by unscrupulous and unanticipated transactions.

173. The vital essence of this additional duty imposed upon the party claiming a right to a property which is a subject matter of a pending proceeding, is only to aid a third-party to exercise its due diligence and obviate the possibility of any dishonesty, misrepresentation or fraud by a party in order to gain an undue advantage or benefit despite the pendency of proceedings. However, if the absence of notice registration were to render the doctrine entirely inapplicable, it would lead to exploitation of procedural gaps by parties who deliberately delay or avoid registering such notices to defeat substantive

rights of the parties and undermine the very sanctity of judicial proceedings. Such an interpretation would lead to a very chilling effect whereby, third-parties despite being expected to verify the title and status of the property would simply abdicate their duty to conduct thorough due diligence in transactions involving immovable properties or that despite being fully aware of the pendency of such proceedings would be able to deviously claim absolute rights to such property or worse, mischievously execute back-dated agreements in collusion with a party to a *lis* prior to registration of such notice of pendency to circumventing the very proceedings and render them infructuous.

174. In ***Sanjay Verma*** (supra) this Court cautioned that the doctrine of *lis pendens* is a principle of public policy without which it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail thereby undermining the sanctity of judicial proceedings and rights of parties so involved therein. Thus, we are of the considered view that even in the absence of a registered notice of pendency in terms of the amended Section 52 of TPA the said provision will not be rendered *ipso-facto* inapplicable, at best it would preclude the party seeking benefit of this doctrine to claim it as a matter of right, but by no stretch would it mean that the third-party conversely would be able to as matter of absolute right claim inapplicability of this doctrine. It would be the discretion of the courts to see keeping in mind the peculiar facts of the case to ascertain whether such doctrine ought

to be applied or not. Where the courts are satisfied that the third-party had genuinely purchased the subject-matter property after an exercise of a reasonable degree of care and caution and that it was otherwise unaware of the pendency of proceedings, the courts would be circumspect to displace the rights of such *bona-fide* third-party by a mechanical application of the doctrine of *lis pendens*. Even otherwise, in view of the peculiar facts of this case, more particularly the fact that the petitioner could not have registered the same being only an auction purchaser and that it was the duty of the Bank to register the notice of pendency which we are inclined to believe was not reasonably possible in view of the haste that was shown by the Borrower and the Subsequent Transferee in redeeming the mortgage and thereafter immediately transferring the Secured Asset, we are of the opinion that the non-registration of notice of pendency is not fatal to the application of the doctrine of *lis pendens* in the present case.

175. During the course of hearing of the present case, we had inquired from the Subsequent Transferee whether it was aware of the pendency of the Main Appeals before this Court at the time of execution of the Assignment Agreement dated 28.08.2023 and at what point of time did the Subsequent Transferee and the Borrower entered into negotiations for the redemption of mortgage and the transfer of the Secured Asset. Mr. Sibal, the learned Senior Counsel appearing for the Subsequent Transferee, replied to the aforesaid

saying that the parties started contemplating the possibility of entering such transaction in June, 2023 and that the Borrower had informed the Subsequent Transferee about the pendency of the proceedings before this Court. Thus, it is not as if the Subsequent Transferee was not aware of what was happening however, when things went wrong, they now cry foul of not being impleaded as parties and heard by this Court in the Main Appeals. Even otherwise, assuming that the petitioner and the Bank herein deliberately chose not to implead the Subsequent Transferee herein in order to mislead this Court in the Main Appeals, the same is immaterial as the Subsequent Transferee too failed to implead itself despite being aware of the pendency of the proceedings before this Court. If at all they were so concerned about the transfer of the Secured Asset in their favour, either they ought to have themselves attempted to implead itself before this Court or requested the Borrower to do the same. In view of the Doctrine of Pari Delicto i.e.., 'in equal fault, the law aids neither party', the Subsequent Transferee cannot seek any benefit from the fault of the petitioner or the Bank when it is itself equally at fault.

176. In view of the aforesaid, we are of the considered view that the execution of the Assignment Agreement dated 28.08.2023 and the transfer of the Secured Asset in pursuance thereto in favour of the Subsequent Transferee is hit by

lis pendens despite the fact that no notice of pendency was registered in terms of the amended Section 52 of the TPA.

177. We are aware of the two decisions of this Court one in the case of ***Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited & Ors.*** reported in **(2013) 5 SCC 397** and ***T. Ravi & Anr. v. B. Chinna Narasimha & Ors.*** reported in **(2017) 7 SCC 342**. In both these decisions, the view taken is that Section 52 of the TPA does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the court.

178. In ***Thomson Press*** (supra), T.S. Thakur, J. (as he then was) in his separate judgment while supplementing the judgment authored by M.Y. Eqbal, J., observed as under: -

> *"53. There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent court may issue in the suit against the vendor."*
>
> (Emphasis supplied)

179. The decision in ***Thomson Press*** (supra) referred to above has been relied upon in ***T. Ravi*** (supra) for the proposition that the effect of Section 52 of the Act 1882 is not to render transfers effected during the pendency of a suit by a party to the suit void; the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court.

180. Thus, although Section 52 of the Act 1882 does not render a transfer pendente lite void yet the court while exercising contempt jurisdiction may be justified to pass directions either for reversal of the transactions in question by declaring the said transactions to be void or proceed to pass appropriate directions to the concerned authorities to ensure that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or anyone claiming under him.

181. Since in the present case, the Assignment Agreement dated 28.08.2023 whereby the Secured Asset was transferred in favour of Greenscape / the Subsequent Transferee herein was effected by the Borrower on the strength of its right of redemption pursuant to the High Court's impugned order which was ultimately set-aside by this Court in its judgment and order dated 21.09.2023 in the Main Appeals, the same rendered Borrower's right to

transfer the Secured Asset *non-est* and by extension the Assignment Agreement void.

iii. <u>Whether any contempt is said to have been committed by the respondents herein</u>?

182. In order to decide whether the appellants are guilty of civil contempt, it would be apposite to refer to Section 2(b) of the Act, 1971, which reads as under: -

> *"**2. Definitions.—***
> *In this Act, unless the context otherwise requires,—*
> *xxx xxx xxx*
> *(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;"*

183. The Black's Law Dictionary, Sixth Edition, at page 1599, defines "willful" as hereunder: -

> *"Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass; designed; intentional; purposeful; not accidental or involuntary. Premeditated; malicious; done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequences; unlawful; without legal justification. An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. It is a word of many meanings, with its construction often influenced by its context. In civil actions, the word (willfully) often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental. But when used in a criminal context it generally means an act done with a bad purpose; without justifiable excuse; stubbornly, obstinately, perversely."*

184. In ***Ashok Paper Kamgar Union v. Dharam Godha and Ors.*** reported in **(2003) 11 SCC 1**, the expression 'wilful disobedience' in the context of Section 2(b) of the Act, 1971 was read to mean an act or omission done voluntarily and intentionally with the specific intent to do something, which the law forbids or with the specific intention to fail to do something which the law requires to be done. Wilfulness signifies deliberate action done with evil intent and bad motive and purpose. It should not be an act, which requires and is dependent upon, either wholly or partly, any act or omission by a third party for compliance.

185. Hence, the expression or word "wilful" means act or omission which is done voluntarily or intentionally and with the specific intent to do something which the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose.

186. Article 129 of the Constitution declares this Court as a "a court of record" and states that it shall have all the powers of such a court including the power to punish for contempt of itself. The provisions of the Act, 1971 and the Rules framed thereunder form a part of a special statutory jurisdiction that is vested

in courts to punish an offending party for its contemptuous conduct. It needs no emphasis that the power of contempt ought to be exercised sparingly with great care and caution. The contemptuous act complained of must be such that would result in obstruction of justice, adversely affect the majesty of law and impact the dignity of the courts of law.

187. It must also be understood that contempt proceedings are *sui generis* inasmuch as the Law of Evidence and the Code of Criminal Procedure, 1973 are not to be strictly applied. At the same time, the procedure adopted during the contempt proceedings must be fair and just that is to say the principles governing the Rule of law must be extended to the party against whom contempt proceedings have been initiated. The party must have every opportunity to place its position before the Court. Such a party must not be left unheard under any circumstances.

188. In ***Ram Kishan v. Tarun Bajaj & Ors.*** reported in **(2014) 16 SCC 204** it was held that the contempt jurisdiction conferred on to the law courts power to punish an offender not only for his wilful disobedience but also for contumacious conduct or obstruction to the majesty of law. It further observed that such power has been conferred for the simple reason that the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the

entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. The relevant observations read as under: -

> *"11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. [...]"*
>
> (Emphasis supplied)

189. In ***Murray & Co. v. Ashok Kr. Newatia & Anr.*** reported in **(2000) 2 SCC 367** this Court held that the purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted, as any indulgence which can even remotely be termed to affect the majesty of law would result in the society losing its confidence and faith in the judiciary and the law courts forfeiting the trust and confidence of the people in general. The relevant observations read as under: -

> *"9 [...] The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted.*

The respect and authority commanded by courts of law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which can even remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus, would forfeit the trust and confidence of the people in general."

(Emphasis supplied)

190. In ***Pushpaben & Anr. v. Narandas Badiani & Anr.*** reported in **(1979) 2 SCC 394**, it was held that contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. It further held that this jurisdiction is to be exercised not for the protection of the dignity of an individual judge but to protect the administration of justice from being maligned and ensure that the authority of the courts is neither imperilled nor is the administration of justice by it interfered with in any manner. The relevant observations read as under: -

"42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to

protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice."

(Emphasis supplied)

191. In ***Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. & Ors.*** reported in **(1988) 4 SCC 592** it was observed that the process of due course of administration of justice must remain unimpaired. Public interest demands that there should be no interference with judicial process and the effect of the judicial decision should not be pre-empted or circumvented. The relevant observations read as under: -

"35. The question of contempt must be judged in a particular situation. The process of due course of administration of justice must remain unimpaired. Public interest demands that there should be no interference with judicial process and the effect of the judicial decision should not be pre-empted or circumvented by public agitation or publications. It has to be remembered that even at turbulent times through which the developing countries are passing, contempt of court means interference with the due administration of justice."

(Emphasis supplied)

192. In ***Rita Markandey v. Surjit Singh Arora*** reported in **(1996) 6 SCC 14**, it was observed that even if parties have not filed an undertaking before the

court but if the court was induced to sanction a particular course of action or inaction on the representation made by a party and the court ultimately finds that the party never intended to act on the said representation or such representation was false, the party would be guilty of committing contempt. The relevant observations read as under: -

> *"12. Law is well settled that if any party gives an undertaking to the court to vacate the premises from which he is liable to be evicted under the orders of the court and there is a clear and deliberate breach thereof it amounts to civil contempt but since, in the present case, the respondent did not file any undertaking as envisaged in the order of this Court the question of his being punished for breach thereof does not arise. However, in our considered view even in a case where no such undertaking is given, a party to a litigation may be held liable for such contempt if the court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the court ultimately finds that the party never intended to act on such representation or such representation was false. In other words, if on the representation of the respondent herein the Court was persuaded to pass the order dated 5-10-1995 extending the time for vacation of the suit premises, he may be held guilty of contempt of court, notwithstanding non-furnishing of the undertaking, if it is found that the representation was false and the respondent never intended to act upon it. [...]"*
>
> (Emphasis supplied)

193. The Borrower and the Subsequent Transferee / the alleged contemnors herein placing reliance on the decision of this Court in ***Patel Rajnikant*** (supra) have contended that in the absence of any disobedience or wilful breach of a prohibitory order no contempt could be said to have been committed. It has been further canvased that this Court in the Main Appeals never issued any

specific direction either to the Borrower or the Subsequent Transferee, & therefore no contempt could be said to have been committed.

194. In ***Patel Rajnikant*** (supra) this Court upon examining Section 2(b) of the Act, 1971 held that to hold a person guilty of having committed contempt, there must be a judgment, order, direction etc. by a court, there must be disobedience of such judgment, order, direction etc and that such disobedience must be willful. The relevant provisions read as under: -

> *"58. The provisions of the Contempt of Courts Act, 1971 have also been invoked. Section 2 of the Act is a definition clause. Clause (a) enacts that contempt of court means "civil contempt or criminal contempt". Clause (b) defines "civil contempt" thus:*
>
> > *"2. (b) 'civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;"*
>
> *Reading of the above clause makes it clear that the following conditions must be satisfied before a person can be held to have committed a civil contempt:*
> *(i) there must be a judgment, decree, direction, order, writ or other process of a court (or an undertaking given to a court);*
> *(ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a court (or breach of undertaking given to a court); and*
> *(iii) such disobedience of judgment, decree, direction, order, writ or other process of a court (or breach of undertaking) must be wilful."*

195. However, the subsequent observations made by this Court in ***Patel Rajnikant*** (supra) are significant. It observed that the court should not hesitate in wielding the potent weapon of contempt, it is for the proper administration of justice and to ensure due compliance with the orders passed by it in order

to uphold and maintain the dignity of courts and majesty of law. The relevant observations read as under: -

> *"70. From the above decisions, it is clear that punishing a person for contempt of court is indeed a drastic step and normally such action should not be taken. At the same time, however, it is not only the power but the duty of the court to uphold and maintain the dignity of courts and majesty of law which may call for such extreme step. If for proper administration of justice and to ensure due compliance with the orders passed by a court, it is required to take strict view under the Act, it should not hesitate in wielding the potent weapon of contempt."*
>
> (Emphasis supplied)

196. What can be discerned from the above exposition of law is that any act of disobedience, defiance, or any attempt to malign the authority of the court would amount to contempt because they undermine the respect and trust that the public reposes in judicial institutions. The judicial process relies on the confidence of society, and any act that disrupts or disrespects this process threatens to erode the foundation of justice and order.

197. Contempt jurisdiction exists to preserve the majesty and sanctity of the law. Courts are the guardians of justice, and their decisions must command respect and compliance to ensure the proper functioning of society. When individuals or entities challenge the authority of courts through wilful disobedience or obstructive behaviour, they undermine the rule of law and create the risk of anarchy. Contempt serves as a mechanism to protect the integrity of the courts, ensuring that they remain a symbol of fairness, impartiality, and accountability.

198. When judicial orders are openly flouted or court proceedings are disrespected, it sends a signal that the rule of law is ineffective, leading to a loss of trust in the system. Judicial decisions must remain unimpaired, free from external pressures, manipulation, or circumvention. Acts that attempt to mislead the court, obstruct its functioning or frustrate its decisions distort the process of justice and would amount to contempt.

199. The contempt jurisdiction of this court cannot be construed by any formulaic or rigid approach. Merely because there is no prohibitory order or no specific direction issued the same would not mean that the parties cannot be held guilty of contempt. The Contempt jurisdiction of the court extends beyond the mere direct disobedience of explicit orders or prohibitory directions issued by the court. Even in the absence of such specific mandates, the deliberate conduct of parties aimed at frustrating court proceedings or circumventing its eventual decision may amount to contempt. This is because such actions strike at the heart of the judicial process, undermining its authority and obstructing its ability to deliver justice effectively. The authority of courts must be respected not only in the letter of their orders but also in the broader spirit of the proceedings before them.

200. Any contumacious conduct of the parties to bypass or nullify the decision of the court or render it ineffective, or to frustrate the proceedings of the court, or to enure any undue advantage therefrom would amount to contempt.

Attempts to sidestep the court's jurisdiction or manipulate the course of litigation through dishonest or obstructive conduct or malign or distort the decision of the courts would inevitably tantamount to contempt sans any prohibitory order or direction to such effect.

201. Thus, the mere conduct of parties aimed at frustrating the court proceedings or circumventing its decisions, even without an explicit prohibitory order, constitutes contempt. Such actions interfere with the administration of justice, undermine the respect and authority of the judiciary, and threaten the rule of law.

202. However, at the same time, the power of contempt ought to be exercised sparingly and with caution and care. It operates with a string of caution and unless otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the courts to resort to such powers. The standard of proof required before a person is held guilty of committing contempt of court must be beyond all reasonable doubt.

203. The courts while exercising its contempt jurisdiction must remain circumspect, more particularly, where there exists a possibility of the order being amenable to more than one interpretation. In ***Jhareshwar Prasad Paul v. Tarak Nath Ganguly*** reported in **(2002) 5 SCC 352** it was held that if an order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it would be appropriate to

direct the parties to approach the court which disposed of the matter for necessary clarification of the order instead of the court exercising its contempt jurisdiction thereby taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. The relevant observations read as under: -

> *"The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order... The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order."*
>
> (Emphasis supplied)

204. It is true that this Court in its decision rendered in the Main Appeals had not issued any specific direction either to the Borrower or the Subsequent Transferee as regards the handing over of physical possession and the original title deed to the Secured Asset, or the proceedings pending before the DRT in S.A. No. 46 of 2022. However, the same would not mean that the

decision of this Court in the Main Appeal was bereft of any direction as to the outcome of its findings. This Court in the operative portion of the Main Appeals stated in unequivocal terms that the confirmation of the sale by Bank under Rule 9(2) of the SARFAESI Rules had vested the petitioner herein with a right to obtain the certificate of sale of the Secured Asset. It further held categorically that the Borrower herein could not have redeemed the mortgage upon publication of the 9th auction notice. Furthermore, this Court explicitly directed the Bank to not only issue the Sale Certificate to the petitioner herein in accordance with Rule 9(6) of the SARFAESI Rules but also directed the refund of the amount of Rs. 129 crore paid by the Borrower. Moreover, the impugned order of the High Court had been set-aside by this Court in *toto*. As already discussed in paragraph 154, the natural corollary to the aforesaid was that the judgment and order dated 21.09.2023 of this Court in Civil Appeals Nos. 5542-5543 of 2023 had held as under: -

(i) The auction proceedings and the sale conducted thereto in favour of the petitioner herein pursuant to the 9th auction notice dated 12.06.2023 had been categorically affirmed and upheld.

(ii) After having directed the issuance of the Sale Certificate in terms of Rule 9(6) of the SARFAESI Rules, nothing remained thereafter, as issuance of sale certificate is absolute and as such the proceedings before the DRT had been rendered infructuous.

(iii) Having directed not only the issuance of the Sale Certificate to the Secured Asset but also the refund of the amount paid by the Borrower, towards redemption of mortgage, necessarily entailed that the Borrower was duty bound to return the possession and title deeds of the secured asset to the Bank for the purpose of handing the same over to the petitioner.

(iv) Having set aside the impugned order passed by the High Court in *toto* rendered any and all acts done pursuant thereto as null and void, and the Borrower and the Subsequent Transferee herein were required to get the Release Deed and the Assignment Agreement dated 28.08.2023 cancelled.

(v) Having expressly directed the issuance of the Sale Certificate it necessarily excluded all other inconsistent and contrary rights and reliefs including the right to pursue the DRT proceedings in view of the maxim *Expressio Unius Est Exclusio Alterius*.

205. Where a decision is rendered and the impugned order is set-aside, it behoves any logic that an express direction to act must be given in respect of every aspect of the decision. The parties are duty bound to act in accordance with common sense. It is axiomatic that a party should obey both the letter and the spirit of a court order, and it is neither open for the parties to adopt a myopic and blinkered view of such decision nor any such interpretation or view that sub-serves their own interests. It is ultimately the purpose for which the order

was granted that will be the lodestar in guiding the parties as to the true effect of the order and determination of the court.

206. If at all the parties are in doubts over the judgment and order of a court, the correct approach is to prefer a miscellaneous application for seeking clarification rather than proceeding to presume a self-serving interpretation of the decision. At this stage, we may also explain the correct approach to be adopted by the other courts and forums where a party seeks to espouse a cause based on its own understanding or interpretation of a decision of an higher authority. In such situations, the courts or forums should neither aid the parties in their attempt to reinterpret the decision of a higher court nor should they embark on an inquisitorial exercise of their own in order to derive the scope or intent of the order in question. The courts and tribunals should not conflate a decision of a higher court that declares a law with a decision that declares the *inter-se* rights of a parties, the former only operates as a precedent and thus, it is open for the lower courts to apply their minds to assess whether the same is applicable to the issues before it or what law has been laid down therein. However, the latter not only has precedential value but also carries with it the weight of determination of the issues directly involved between the very parties before it, the subject-matter itself and by extension the entire cause of action. Since such decisions have directly decided or given a finding on the *inter-se* rights and issues of the same parties that are before it and as such has to a certain extent a direct and palpable

effect on the cause of action before it, in such circumstances, the courts and tribunals should refrain from interpreting or examining the scope or effect of such decisions on their own as the same would amount to relitigating the very same issues and rather should relegate the parties to seek clarification from the court that passed the order and adjourn further proceedings *sine die*.

207. We further take note of the fact that both the Borrower and the Subsequent Transferee made several attempts to prevent the effective implementation of the judgement and order dated 21.09.2023 passed by this Court and thereby thwart the attempts of the Bank to hand over the physical possession and the original title deeds of the Secured Asset to the petitioner.

(i) First, both the Borrower and the Subsequent Transferee addressed a letter to the MIDC in whose industrial area the Secured Asset was situated asking them not to entertain any request from the Bank or the petitioner regarding the transfer of the leasehold rights of the Secured Asset in favour of the petitioner.

(ii) Secondly, the Subsequent Transferee vide its letter dated 05.10.2023 even asked the Sub-Registrar Office, Nerul Thane not to entertain any request of the petitioner regarding the transfer of the Secured Asset.

(iii) The self-serving stance of the Borrower to initially contend that it no longer had any role or authority over the secured asset in view of its transfer and thus, cannot handover the physical possession and the original title deeds to the same, yet in the same breath filing an

application seeking stay of the notice for obtaining physical possession of the Secured Asset.

(iv) The police complaint lodged by the Subsequent Transferee against the Bank by distorting the decision of this Court in the Main Appeals and to thwart the attempts for its implementation.

(v) The patently false contention of the Subsequent Transferee that it instituted the suit to prevent its unlawful dispossession of the Secured Asset due to the alleged illegal attempts of the petitioner to take the same forcefully yet, in the said suit instead of seeking permanent injunction, the Subsequent Transferee not only sought the relief of declaration of title in its favour but also the invalidation of the Sale Certificate issued to the petitioner, contrary to the decision of this Court in the Main Appeals.

208. In the facts of the case, we are convinced that both the Borrower and the Subsequent Transferee have committed contempt of this Court's judgment and order dated 21.09.2023 in the Main Appeals. The aforementioned acts of the contemnors are nothing more than a gamble on their part to circumvent and undermine the findings and directions passed by this Court in the Main Appeals. Similarly, the lame excuses offered by them for explaining their conduct are also nothing more than a calculated attempt in the hope that they

would get away with legitimizing the illegal Assignment Agreement even after the decision of this Court, and is equally contemptuous.

209. However, on an overall conspectus of the facts of the present case, while the initial acts of the Borrower and the Subsequent Transferee are in violation of this Court's judgment and order dated 21.09.2023, yet the efforts on their part to take steps and make amends by withdrawing the Special Civil Suit No. 5 of 2024 along with their belated unconditional undertaking to comply with any further order that this Court may deem fit and proper to pass, demonstrates their effort and willingness to purge themselves of their contemptuous conducts. Thus, we are inclined to provide one last opportunity to the Borrower herein and the Subsequent Transferee to abide by the judgement and order dated 21.09.2023 passed by this Court and further comply with the directions issued in the present contempt petition, and thus, deem it fit not to hold them guilty of contempt for the present moment.

iv. <u>Circumstances when a sale of property by auction or other means under the SARFAESI Act may be set-aside after its confirmation</u>.

210. We must also address one very important aspect as regards when the sale of secured asset either by auction or any other method under the SARFAESI Act may be challenged or set-aside after its confirmation.

211. In ***B. Arvind Kumar v. Govt of India & Ors.*** reported in **(2007) 5 SCC 745** this Court whilst dealing with a plea to set-aside the sale of the property

therein by way of public auction by the official receiver, it was held that when the sale is confirmed by the court, the sale becomes absolute and therefrom the title vests in the auction purchaser. The relevant observations read as under: -

> *"12. [...] When a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction-purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. In this case, the sale certificate itself was registered, though such a sale certificate issued by a court or an officer authorised by the court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which require registration under sub-sections (b) and (c) of Section 17(1) of the said Act. We therefore hold that the High Court committed a serious error in holding that the sale certificate did not convey any right, title or interest to plaintiff's father for want of a registered deed of transfer."*
>
> (Emphasis supplied)

212. In ***LICA (P) Ltd. v. Official Liquidator*** reported in **(1996) 85 Comp Cas 788 (SC)** this Court held that the purpose of an open auction is to get the most remunerative price with the highest possible public participation, and as such the courts shall exercise their discretion to interfere where the auction suffers from any fraud or inadequate pricing or underbidding that too with

circumspection, keeping in view the facts of each case. The relevant observations read as under: -

> *"The purpose of an open auction is to get the most remunerative price and it is the duty of the court to keep openness of the auction so that the intending bidders would be free to participate and offer higher value. If that path is cut down or closed the possibility of fraud or to secure inadequate price or underbidding would loom large. The court would, therefore, have to exercise its discretion wisely and with circumspection and keeping in view the facts and circumstances in each case."*
>
> (Emphasis supplied)

213. This Court in ***Valji Khimji*** (supra) held that once an auction is confirmed the objections to the same should not ordinarily be allowed, except on very limited grounds like fraud as otherwise no auction would ever be complete. The relevant observations read as under: -

> *"11. It may be noted that the auction-sale was done after adequate publicity in well-known newspapers. Hence, if any one wanted to make a bid in the auction he should have participated in the said auction and made his bid. Moreover, even after the auction the sale was confirmed by the High Court only on 30-7-2003, and any objection to the sale could have been filed prior to that date. However, in our opinion, entertaining objections after the sale is confirmed should not ordinarily be allowed, except on very limited grounds like fraud, otherwise no auction-sale will ever be complete.*
>
> *xxx xxx xxx*
>
> *29. [...] It may be mentioned that auctions are of two types – (1) where the auction is not subject to subsequent confirmation, and (2) where the auction is subject to subsequent confirmation by some authority after the auction is held. 30. In the first case mentioned above, i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights*

accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud."

(Emphasis supplied)

214. In ***Ram Kishun & Ors. v. State of Uttar Pradesh & Ors.*** reported in **(2012) 11 SCC 511** this Court although held that where public money is to be recovered such recovery should be done expeditiously, yet the same must be done strictly in accordance with the procedure prescribed by law. However, this Court after examining a plethora of other decisions further held that once the sale has been confirmed it cannot be set aside unless a fundamental procedural error has occurred or sale certificate had been obtained by misrepresentation or fraud. The relevant observations read as under: -

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

xxx xxx xxx

28. In view of the above, the law can be summarised to the effect that the recovery of the public dues must be made strictly in accordance with the procedure prescribed by law. The liability of a surety is coextensive with that of the principal debtor. In case there are more than one surety the liability is to be divided equally among the sureties for unpaid amount of loan. Once the sale has been confirmed it cannot be set aside unless a fundamental procedural error has occurred or sale certificate had been obtained by misrepresentation or fraud."

(Emphasis supplied)

215. In ***PHR Invent Educational Society v. UCO Bank*** reported in **(2024) 6 SCC 579** it was again reiterated that an auction-sale which stands confirmed can only be interfered with when there was any fraud or collusion, and entertaining of issues regarding the validity of such auction would amount to reopening issues which have achieved finality. The relevant observations read as under: -

> *"34. In our view, the High Court ought to have taken into consideration that the confirmed auction-sale could have been interfered with only when there was a fraud or collusion. The present case was not a case of fraud or collusion. The effect of the order of the High Court would be again reopening the issues which have achieved finality."*

216. In ***V.S. Palanivel v. P. Sriram*** reported in **2024 INSC 659** this Court again reiterated unless there are some serious flaws in the conduct of the auction as for example perpetration of a fraud/collusion, grave irregularities that go to the root of such an auction, courts must ordinarily refrain from setting them aside keeping in mind the domino effect such an order would have. The relevant observations read as under: -

> *"36.14. This Court must underscore the well settled legal position that once an auction is confirmed, it ought to be interfered with on fairly limited grounds. (Refer: Valji Khimji and Co. v. Hindustan Nitro Product (Gujarat) Ltd. (Official Liquidator) MANU/SC/3408/2008 : 2008:INSC:925 : (2008) 9 SCC 299 and Celir LLP v. Bafna Motors (Mumbai) Private Limited and Ors. MANU/SC/1042/2023 : 2023:INSC:838 : (2024) 2 SCC 1). Repeated interferences in public auction also results in causing uncertainty and frustrates the very purpose of holding auctions. (Refer : K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple and Ors. MANU/SC/0213/2022 : 2022:INSC:207 : (2022) 5 SCC*

> *710). Unless there are some serious flaws in the conduct of the auction as for example perpetration of a fraud/collusion, grave irregularities that go to the root of such an auction, courts must ordinarily refrain from setting them aside keeping in mind the domino effect such an order would have. Given the facts noted above, we shall refrain from cancelling the sale or declaring the Sale Deed as void. Instead, it is deemed appropriate to balance the equities by directing the Auction Purchaser to pay an additional amount in respect of the subject property*."
>
> (Emphasis supplied)

217. In the present *lis*, it is not the case of the Borrower herein that the 9th auction conducted by the Bank was a result of any collusion or fraud either at the behest of the Bank or the Successful Auction Purchaser herein. Aside from the lack of any 15-days gap between the notice of sale and the notice of auction, no other illegality has been imputed to the aforesaid auction proceedings. It is also not the case of the Borrower that due to the absence of the aforesaid statutory period, any prejudice was caused or that it was prevented from effectively exercising its rights due to such procedural infirmity. Despite a total of eight auctions being conducted by the Bank from April, 2022 to June, 2023, not once did the Borrower express its desire to redeem the mortgage. Even when the auction notice came to be issued on 12.06.2023, the Borrower never intimated that it was in process of redeeming the mortgage with the aid of the Subsequent Transferee and that the auction be delayed even though, as per the parties own submissions, they started exploring the possibility of redeeming the mortgage and thereafter transferring in June, 2023 itself. In such circumstances, given the fact that

although the S.A. No. 46 of 2022 was still pending, yet since there was nothing before this Court to doubt the validity of the 9th auction, this Court in the Main Appeals confirmed the sale in favour of the petitioner and brought the auction proceedings to its logical conclusion by directing the issuance of the sale certificate. The Borrower never raised the issue of the validity of the 9th auction notice despite having sufficient opportunities to do so even after the pronouncement of the decision in the Main Appeals, and that such pleas are being raised only after the auction was confirmed in favour of the petitioner, we find no good reason to interfere with the 9th auction conducted by the Bank.

218. Any sale by auction or other public procurement methods once already confirmed or concluded ought not to be set-aside or interfered with lightly except on grounds that go to the core of such sale process, such as either being collusive, fraudulent or vitiated by inadequate pricing or underbidding. Mere irregularity or deviation from a rule which does not have any fundamental procedural error does not take away the foundation of authority for such proceeding. In such cases, courts in particular should be mindful to refrain entertaining any ground for challenging an auction which either could have been taken earlier before the sale was conducted and confirmed or where no substantial injury has been caused on account of such irregularity.

219. In the present *lis*, apart from the want of statutory notice period, no other challenge has been laid to the 9th auction proceedings on the ground of it being either collusive, fraudulent or vitiated by inadequate pricing or underbidding, thus, the auction cannot be said to suffer from any fundamental procedural error, and as such does not warrant the interference of this Court, particularly when the plea sought to be raised to challenge the same could have been raised earlier.

220. The aforesaid may be looked at from one another angle. Even if the 9th auction were to be held illegal and bad in law by virtue of the aforesaid S.A. No. 46 of 2022, it would not mean that the auction purchaser would by virtue of such finding lose all its rights to the secured asset, even after having the sale confirmed in its favour. In this regard we may refer to the decision of this Court in ***Janak Raj v. Gurdilal Singh & Ors.*** reported in **AIR 1967 SC 608** wherein it was held that even if a decree pursuant to which auction was previously conducted was later set-aside, the successful auction purchaser's rights will remain unaffected and he would still be entitled to confirmation of sale in its favour. The relevant observations read as under: -

> *"27. For the reasons already given and the decisions noticed, it must be held that the appellant-auction purchaser was entitled to a confirmation of the sale notwithstanding the fact that after the holding of the sale the decree had been set aside. The policy of the Legislature seems to be that unless a stranger auction-purchaser is protected against the vicissitudes of the fortunes of the suit, sales in execution would not attract customers and it would be to the detriment of the interest of the borrower and the creditor alike if sales were allowed to be impugned merely*

> *because the decree was ultimately set aside or modified. The Code of Civil Procedure of 1908 makes ample provision for the protection of the interest of the judgment-debtor who feels that the decree ought not to have been passed against him. On the facts of this case, it is difficult to see why the judgment-debtor did not take resort to the provisions of O. XXI r. 89. The decree was for a small amount and he could have easily deposited the decretal amount besides 5 per cent of the purchase money and thus have the sale set aside. For reasons which are not known to us he did not do so."*
>
> (Emphasis supplied)

E. FINAL ORDER

221. Before we close this judgment, we may address yet another submission canvassed on behalf of the respondents herein. It was contended by the Borrower and the Subsequent Transferee that the petitioner herein having not prayed for the relief of physical possession in the original proceedings cannot be permitted to expand the scope of the said proceedings and now seek the relief which it previously did not. In this regard, we may only refer to the decision of this Court in ***Baranagore Jute Factory Plc. Mazdoor v. Baranagore Jute Factory Plc.*** reported in **AIR ONLINE 2017 SC 410** wherein it was held the court not only has a duty to issue appropriate directions for remedying or rectifying the things done in violation of its orders but also the power to take restitutive measures at any stage of the proceedings. The relevant observations read as under: -

> *"... As held by this Court in Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and another, and going a step further, the Court has a duty to issue appropriate directions for remedying or rectifying the things done in*

violation of the orders. In that regard, the Court may even take restitutive measures at any stage of the proceedings. [...]"

(Emphasis supplied)

222. Similarly, a Three-Judge Bench of this Court in the case of ***State Bank of India & Ors. v. Dr. Vijay Mallya*** reported in **2022 SCC Online SC 826**, in clear terms said that apart from punishing the contemnor for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the Court so that any advantage secured as a result of such contumacious conduct is completely nullified. The approach may require the Court to issue directions either for reversal of the transactions in question by declaring said transactions to be void or passing appropriate directions to the concerned authorities to see that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or anyone claiming under him.

223. In view of the aforesaid, we pass the following orders and directions: -

(i) The legality and validity of the 9th auction proceedings conducted pursuant to the notice of sale dated 12.06.2022 is upheld. The sale of the Secured Asset to the petitioner is hereby confirmed and the title conferred through the Sale Certificate dated 27.09.2023 is declared to be absolute.

(ii) The Borrower and the Bank shall immediately take steps for the cancellation of the Release Deed dated 28.08.2023 within a period of one week from the date of pronouncement.

(iii) The Borrower shall also unconditionally withdraw the S.A. No. 46 of 2022 pending before the DRT within a period of one week from the date of pronouncement.

(iv) The Assignment Agreement dated 28.08.2023 is hit by *lis pendens* and hereby declared void. The Subsequent Transferee shall hand over the peaceful physical possession of the Secured Asset along with its original title deeds to the Bank within a period of one week from the date of pronouncement of this judgment. In the event of any further hinderance or any obstruction that may be caused by the Borrower or the Subsequent Transferee while taking over the possession of the property then in such circumstances the Bank shall take the assistance of police.

(v) The Subsequent Transferee shall also withdraw the police complaint dated 17.01.2024 lodged by it within a period of one week from the date of pronouncement of this judgment.

(vi) We clarify that the Subsequent Transferee is not entitled to recover the amount paid by it towards redeeming the second charge over the Secured Asset or any other dues or amount paid in respect of the same from the petitioner herein.

(vii) The Bank shall refund the amount of Rs. 129 crore paid by the Borrower towards the redemption of mortgage without any interest only after the aforesaid directions have been complied to the letter and spirit.

(viii) The Subsequent Transferee is at liberty to recover the amount paid by it towards the Assignment Agreement dated 28.08.2023 and any other amount from the Borrower by availing appropriate legal remedy as may be available under the law.

224. Let this matter be notified once again before this Bench after a period of two weeks to report compliance of the aforesaid directions.

225. There shall be no order as to costs.

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

..... J.
(Manoj Misra)

13th December, 2024.
New Delhi.