
(2025) 05 AHC CK 0811
In the Allahabad High Court
Case No : Writ Petition C No.13012 Of 2025

Anil Kumar Jaiswal

APPELLANT

Vs

Union Bank Of India And Another

RESPONDENT

Date of Decision : 06-05-2025

Acts Referred:

Citation : (2025) 05 AHC CK 0811

Hon'ble Judges : Brij Raj Singh, J

Bench : Division Bench

Advocate : Pankaj Verma, Abhishek Dwivedi, C.L.Yadav, Chote Lal Yadav, Dinesh Kumar Tripathi, Ajay Kumar Singh Raj, M A Siddiqui

Final Decision : Allowed

Judgement

1. Heard Sri Rahul Agarwal, learned counsel appearing along with learned counsel, Sri Vipul Pandey, in support of this petition and Sri Anil Kumar Bajpai, learned counsel appearing on behalf of the respondent-Bank.
2. This is a writ petition under Article 226 of the Constitution of India, wherein the petitioner is aggrieved by the inaction on the part of the respondent authority(ies), in refunding the 25% of amount i.e. to the tune of Rs.17.49 Lacs, deposited by the petitioner pursuant to the e-auction dated 29.12.2023, stated to be forfeited by the respondent-Bank in exercise of Rule 9(5) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as "2002 Rules").
3. The case of the petitioner is that after the petitioner failed to deposit the balance 75% within the time prescribed, the earnest money was forfeited. However, the petitioner submits that the bank subsequently itself withdrew the entire previous SARFAESI action against the mortgaged property by a letter dated November 18, 2024, with liberty to take a fresh SARFAESI action, which was once again taken on November 18, 2024.
4. Sri Rahul Agarwal, learned counsel who is appearing along with Sri Vipul Pandey, for the petitioner, submits that the present case is peculiar in its nature

as there are exceptional circumstances wherein the forfeited amount should be returned/refunded to the petitioner on grounds of the law of equity. He submits that since the entire SARFAESI action taken by the bank was ipso facto withdrawn by it, on a later date, the forfeiture of the amount deposited by the petitioner would be contrary to the principles of law and would amount to unjust enrichment. Sri Rahul Agarwal, learned counsel, draws the attention of the Court to paragraphs 108 to 118 of the Supreme Court judgment in the case of Authorised Officer, Central Bank of India Vs. Shanmugavelu reported in (2024) 6 SCC 641, to buttress his arguments that in certain exceptional circumstances the forfeited amount may be refunded.

5. Per contra, the counsel appearing on behalf of the bank submits that the aforesaid judgment in Shanmugavelu (*supra*) specifically states that the concept of unjust enrichment would not apply in case of forfeiture of amount under Rule 9(5) of the 2002 Rules. He submits that in fact the exceptional circumstances that have been discussed in paragraphs 115 to 118, would only relate to extraneous conditions that may have existed which had prevented the successful bidder from depositing the balance of the amount. Any steps taken by the bank subsequent to the failure of the auction-purchaser would have no relevance whatsoever with regard to the said forfeiture.

6. Upon perusal of the records and after hearing the counsel appearing on behalf of the parties, we may rely on paragraph 112 of the judgment in Shanmugavelu (*supra*), which is delineated below:

"112. The consequence of forfeiture of 25% of the deposit under Rule 9(5) of the SARFAESI Rules is a legal consequence that has been statutorily provided in the event of default in payment of the balance amount. The consequence envisaged under Rule 9(5) follows irrespective of whether a subsequent sale takes place at a higher price or not, and this forfeiture is not subject to any recovery already made or to the extent of the debt owed. In such cases, no extent of equity can either substitute or dilute the statutory consequence of forfeiture of 25% of deposit under Rule 9(5) of the SARFAESI Rules."

7. J.B. Pardiwala, J. in his inimitable style has examined a catena of judgments to understand the interplay between law and equity. Paragraph 113 of the judgment is apposite to be quoted below:

"113. This Court in National Spot Exchange Ltd. v. Dunar Foods Ltd. (Resolution Professional), (2022) 11 SCC 761 after referring to a catena of its other judgments, had held that where the law is clear the consequence thereof must follow. The High Court has no option but to implement the law. The relevant observations made in it are being reproduced below: (SCC pp. 774-75, para 15)

"15. ... 15.1. In BSNL v. Mishri Lal, (2011) 14 SCC 739, it is observed that the law prevails over equity if there is a conflict. It is observed further that equity can only supplement the law and not supplant it.

15.2. In *Raghunath Rai Bareja v. Punjab National Bank*, (2007) 2 SCC 230, in paras 30 to 37, this Court observed and held as under: (SCC pp. 242-43)

'30. Thus, in *Madamanchi Ramappa v. Muthaluru Bojjappa*, 1963 SCC OnLine SC 36 : (2007) 2 SCC 230 (vide AIR para 12) this Court observed : (AIR p. 1637)

"12. ... [W]hat is administered in courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law."

31. In *Council for Indian School Certificate Examination v. Isha Mittal*, (2000) 7 SCC 521 (vide para 4) this Court observed : (SCC p. 522)

"4. ... Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law."

32. Similarly, in *P.M. Latha v. State of Kerala*, (2003) 3 SCC 541 (vide para 13) this Court observed: (SCC p. 546)

"13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law."

33. In *Laxminarayan R. Bhattad v. State of Maharashtra*, (2003) 5 SCC 413 (vide para 73) this Court observed: (SCC p. 436)

"73. It is now well settled that when there is a conflict between law and equity the former shall prevail."

34. Similarly, in *Nasiruddin v. Sita Ram Agarwal*, (2003) 2 SCC 577 (vide para 35) this Court observed: (SCC p. 588)

"35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom."

35. Similarly, in *E. Palanisamy v. Palanisamy*, (2003) 1 SCC 123 (vide para 5 this Court observed: (SCC p. 127) Equitable considerations have no place where the statute contained express provisions.

36. In *India House v. Kishan N. Lalwani*, (2003) 9 SCC 393 (vide para 7) this Court held that: (SCC p. 398)

"7. ... The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations." '..."

(emphasis in original and supplied)"

8. Furthermore, the Supreme Court, in paragraph 118 of the judgment in *Shanmugavelu* (supra), after discussing the various Supreme Court judgments, held as follows:

"118. Thus, this Court held that where extraneous conditions exist that might

have led to the inability of the successful auction-purchaser despite best efforts from depositing the balance amount to no fault of its own, in such cases the earnest money deposited by such innocent successful auction-purchaser could certainly be asked to be refunded.”

9. Upon perusal of the above paragraphs of the judgment, it is crystal clear that the present case wherein the petitioner is seeking refund of the forfeited amount on the ground of re-initiation of the SARFAESI action by the bank upon the borrower, would not come within the contours of an ‘exceptional circumstance’, leading to dilution of the statutory consequence of forfeiture under Rule 9(5) of the 2002 Rules. As is clear from the factual matrix, the petitioner has not indicated any extenuating circumstances that resulted in failure on the part of the petitioner to deposit the balance amount within the prescribed time. Accordingly, there is no question of any equity in his favour. The subsequent actions of the Bank in re- initiating the SARFAESI action cannot enure to the benefit of the petitioner in any manner whatsoever, as forfeiture is a statutory consequence under the 2002 Rules.

10. In light of the same, in spite of the eloquence and incisive points raised by Mr. Rahul Agarwal, counsel appearing for the petitioner, we are of the view that these arguments are only in the nature of sophistry, and hence, have to be out rightly rejected by this Court.

11. Ergo, the writ petition is dismissed.